

# **EXHIBIT 5**

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IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION

MISSISSIPPI STATE CONFERENCE  
OF THE NAACP, ET AL. PLAINTIFFS  
VERSUS CIVIL ACTION NO. 3:22-CV-00734-DPJ-HSO-LHS  
STATE BOARD OF ELECTION COMMISSIONERS, ET AL. DEFENDANTS

THREE-JUDGE PANEL TRIAL

BEFORE CHIEF DISTRICT JUDGE DANIEL P. JORDAN, III,  
DISTRICT JUDGE SUL OZERDEN,  
AND FIFTH CIRCUIT JUDGE LESLIE SOUTHWICK

THAD COCHRAN UNITED STATES COURTHOUSE  
501 E. COURT STREET,  
JACKSON, MISSISSIPPI

TRANSCRIPT VOLUME 1,  
FEBRUARY 26, 2024

(APPEARANCES NOTED HEREIN.)

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**IN OPEN COURT, FEBRUARY 26, 2024**

JUDGE SOUTHWICK: Please be seated.

So I don't know if anybody has taken a roll, but this is a pretty good crowd here. Welcome to all of you. Those of you who have appeared previously on this case, I am the truant judge who is finally showing up.

As you are familiar with the statutes, preliminary matters can be handled even by just one judge. Three of us will be here for the entirety of these proceedings now that the evidence and argument is being presented. We have a lot to do. We set aside two weeks to do it. All of you treated this case very seriously. We will continue to do so, so as this panel.

Among the things we want you to take very seriously is to finish this case in two weeks. I, for one, and perhaps my colleagues as well, have judicial obligations to start the following week. So it's not a matter of just keep going. We need to finish this thing by Friday, whatever that means, 10, 11 days from now.

My role in this case will not be to preside. You've already been told that. It's probably a relief to a fair number of you that you're going to have an experienced district judge, Chief Judge Jordan, in charge of these proceedings in this courtroom. We'll do the best we can as

1 the other two panel members to let him rule on evidentiary  
2 objections or other matters that would generally be handled  
3 sort of as a matter of course, whatever those objections  
4 might be. He has assured us that if we want to confer on  
5 something, he will allow us to confer.

6 With that, I'll turn this over to Chief Judge  
7 Jordan, who has significantly more detail on what's ahead.

8 JUDGE JORDAN: Thank you. Good morning.

9 All right. First, are the parties ready to proceed?

10 MR. SAVITZKY: Plaintiffs are ready to proceed, Your  
11 Honor.

12 MR. CARDIN: Yes. Defendants are ready, Your Honor.

13 JUDGE JORDAN: All right. Mr. Wallace, are you  
14 ready to proceed?

15 MR. WALLACE: He said defendants, that includes me.

16 JUDGE JORDAN: Okay. All right. I do have some  
17 housekeeping matters to take up. First, I'll instruct  
18 Ms. Powell at this point to docket the pretrial order. I  
19 do note the order reflected pending motion 188, and I would  
20 just note for the record that since that time, 196 has been  
21 docketed, and we'll take those up this morning.

22 Mr. Savitzky emailed me yesterday regarding  
23 deposition transcripts for -- is it Lennep; is that right?

24 MR. SAVITZKY: Yes, Your Honor, Lennep and  
25 Mr. Kirkpatrick as well.

1 JUDGE JORDAN: When you sent the email, you were  
2 asking whether to bring a hard copy for the record, and  
3 obviously I instructed you to do that. Everybody was  
4 copied on it. I had not seen those two depositions, and I  
5 was afraid that maybe I had missed it. But I spoke with  
6 Ms. Powell, and she hasn't seen it either. So at some  
7 point somewhere that got -- maybe on our end or your end,  
8 I'm not sure. But we have not seen it.

9 Were there objections in the depositions?

10 MR. SAVITZKY: There are a few objections. Not very  
11 many, but there are a couple in there noted. There's a  
12 cover sheet that contains the designations,  
13 counter-designations, and objections. And those are also  
14 noted in the format the Court prescribed in the transcript  
15 excerpts themselves.

16 JUDGE JORDAN: If you would please have somebody  
17 email the PDF -- I think you said it was a PDF; is that  
18 right?

19 MR. SAVITZKY: Yes, You Honor. It's a single PDF  
20 with excerpts from both transcripts. I do believe we  
21 emailed the Court, and we can certainly email it again.

22 JUDGE JORDAN: Thank you. All right. There were  
23 requests to have, obviously, attorneys but also witnesses  
24 bring phones with them. We granted that, but I'm going to  
25 remind everybody to check right now, make sure your phones

1 are on silent, make sure the vibration is off, too. And I  
2 would ask you to be mindful of that throughout the next two  
3 weeks. I also remind everybody that, you know, even though  
4 you have phones here that there can be no recordings of the  
5 proceedings, no video, no audio. So everybody in the  
6 courtroom here is advised of that in order to refrain from  
7 any recording.

8           There was one member of the press that asked for  
9 permission to use his laptop to take notes. He's submitted  
10 an affidavit acknowledging the Court's rules against  
11 recording and signed that. We would extend that same  
12 opportunity to any other members of the press provided that  
13 they also sign that affidavit and are aware that, again,  
14 there can be no recordings whatsoever of the proceedings.

15           I will say -- and I apologize for being heavy handed  
16 here, but that's a significant rule. And I have had on one  
17 occasion where a reporter broke that rule and put a  
18 photograph of the court proceedings on the internet. I did  
19 send the U.S. Marshals. It didn't happen again. But it's  
20 a privilege and a courtesy to have those devices in the  
21 courtroom. And if it's abused, then we will withdraw that  
22 courtesy as to all the press.

23           All right. I'll just remind you, and I know that  
24 our court reporter, Ms. Crane, here will remind you as  
25 well, but she is making a recording of the proceedings.



1 It's important, you know, in terms of having an accurate  
2 record that the recording devices pick up what you're  
3 saying. So, you know, we will ask at all times that you  
4 remain on microphone and make sure that your microphones  
5 are turned on.

6 All right. Now, with respect to evidentiary  
7 objections, I will just kind of note upfront that this is a  
8 bench trial. There is no risk of tainting the jury. There  
9 are going to be objections where we have to hear the  
10 evidence anyhow to determine whether or not, for example,  
11 it's relevant.

12 It is likely that the Court will lean on Rule 104(b)  
13 and admit the evidence. If it turns out that the evidence  
14 is -- has no weight or is not relevant, then it will not  
15 impact the ultimate judgment of the Court. Our final  
16 opinion will identify the evidence upon which we relied.  
17 And if there's something that it turns out that was not  
18 relevant, then it just will not be considered.

19 I will note that we will essentially take the same  
20 approach with respect to expert objections. As we've all  
21 discussed, there was, during the pretrial conference, a  
22 discussion about whether the Republican Party had waived  
23 objection to the plaintiffs' experts by not filing a  
24 *Daubert* motion within the time allowed in our local rules.  
25 Whether the party is allowed to object at this point really

1 doesn't impact the evidence. I think that the intervenor  
2 would still be allowed to cross-examine the witnesses as to  
3 their qualifications and as to their methodology.  
4 Essentially the Rule 702 type issues. So it's not -- on  
5 the other hand, we would want to hear from the experts to  
6 determine -- because we have to either determine whether  
7 they're qualified or the weight to give their testimony, so  
8 we don't anticipate that that's going to impact the  
9 evidence and whether or not they can raise an objection at  
10 this point is something we can address at another time.

11 That said, the qualifications and methodology are  
12 different from the objection to introducing the reports.  
13 That's not something that our local rules would address.  
14 Mr. Wallace, am I correct in reading the pretrial order and  
15 your proposed findings of fact it appears this issue  
16 applies only to Lockett and King; is that right?

17 MR. WALLACE: Yes. We've stipulated to the  
18 admission of all the rest of the reports. We don't think  
19 you can waive a report into evidence, and we object to  
20 Lockett and King.

21 JUDGE JORDAN: All right. As to that, we certainly  
22 understand that it can be a time-saver, and it could be at  
23 the end of the day that using the reports might save more  
24 time for the defendants' case next week. Having said that,  
25 plaintiffs need to be prepared to put on that evidence if

1 we rule that you cannot offer the reports.

2 Frankly, the cases that the plaintiffs cited saying  
3 that the Court can do that don't support the position.  
4 They almost uniformly say if it's agreed to by the parties,  
5 then you can offer the report. But those very same cases  
6 sustained objections to the admissions of the reports,  
7 because they weren't agreed to. They're hearsay.

8 So just in the interest of making sure you're  
9 prepared and your witnesses are prepared, I'll let you  
10 argue it when the time comes, but from what I've read so  
11 far, I don't think that those reports should come in.

12 MR. SAVITZKY: Understood, Your Honor, and we'll be  
13 prepared to argue the issue and present the testimony.

14 JUDGE JORDAN: All right. Thank you. All right.  
15 With respect to objections, quickly, I'll probably rule on  
16 objections as to the form of the question. But, you know,  
17 more substantive questions, we may confer. And I think  
18 we'll probably get into -- none of us have done this  
19 before, but we'll probably get into a rhythm of how we  
20 handle that.

21 Now, Mr. Savitzky, are you getting daily copies?

22 MR. SAVITZKY: We are, Your Honor.

23 JUDGE JORDAN: Okay. I'm going to ask that you  
24 provide what I've said and what Judge Southwick said to  
25 your attorneys who are not here.

1 All right. Do the parties wish to invoke the rule?

2 MR. CARDIN: Yes, Your Honor, we do wish to invoke  
3 the rule.

4 JUDGE JORDAN: Okay. The rule's been invoked. I  
5 don't know any of the witnesses, so the parties will need  
6 to monitor that, and if there's somebody here in the  
7 courtroom that shouldn't be, you can let me know. Now,  
8 with respect to that, I know -- go ahead.

9 MR. SAVITZKY: Just on the issue, I believe the  
10 parties have agreed that for expert witnesses, they would  
11 be able to stay in the courtroom.

12 JUDGE JORDAN: Yes, sir.

13 MR. CARDIN: Yes, sir. We're in agreement with  
14 that.

15 JUDGE JORDAN: All right. Very good.

16 MR. SAVITZKY: And, Your Honor, one other point of  
17 clarification. As I understand it, opening statements are  
18 not evidence, so the rule wouldn't apply until after  
19 opening statements.

20 JUDGE JORDAN: All right. Okay. So we do have two  
21 motions. I emailed the parties on Sunday indicating that  
22 we would take those up. It's 188 and 196. 188 is the  
23 defendants' motion for judicial notice of census data.  
24 Who's going to argue that on behalf of the defendants?

25 MR. CARDIN: Your Honor, may it please the Court,

1 Tommie Cardin, I'll make that argument.

2 JUDGE JORDAN: Mr. Cardin, come on up. And while  
3 you are, I guess there are a couple of issues I want you to  
4 address, and then you can address anything else that you'd  
5 like to.

6 MR. CARDIN: Okay.

7 JUDGE JORDAN: All right. From reading your briefs,  
8 it seems to us that you are not asking the Court to take  
9 judicial notice of the census data in the sense that you're  
10 asking us to accept that it's true. It feels more like  
11 you're asking us to admit the census data, and then allow  
12 the plaintiffs to put on evidence to show that it's in some  
13 way inaccurate. But I'm not sure that Rule 201 works that  
14 way.

15 Under 201(f), if the Court takes judicial notice of  
16 something, you have to instruct the jury that it's  
17 established. And so we can't take judicial notice the  
18 census data is accurate, because you yourself said in your  
19 motion that plaintiffs are entitled to put on their  
20 evidence showing it's not. So it doesn't seem like the  
21 type of issue for which the Court takes judicial notice.  
22 It sounds more like you're asking us to find that it's a  
23 self-authenticating document under 902(5).

24 MR. CARDIN: Your Honor, may it please the Court?

25 JUDGE JORDAN: Yes, sir.

1           MR. CARDIN: We do believe that this data qualifies  
2 under Rule 201, because it's data that certainly is an  
3 adjudicated fact. There's no question about that.

4           But, secondly, with regard to the requirements in  
5 the rule that its accuracy -- it has to be capable of  
6 accurate and ready determination by resorting to sources  
7 that can accurately -- whose accuracy cannot be questioned.  
8 This is United States Census Bureau data. This data is  
9 collected every two years, and it's been collected every  
10 two years for probably the past some-odd-60 years. And  
11 significantly, this is data that the U.S. Supreme Court in  
12 *Shelby County* against *Holder* specifically cited and relied  
13 upon in its holding of Section 4 of the Voting Rights Act  
14 unconstitutional. So we believe that the data in and of  
15 itself, Your Honor, is not data that can be reasonably  
16 questioned in terms of what's being reported.

17           JUDGE SOUTHWICK: Counsel, I may be out of place as  
18 an appellate judge, but I hope we can exchange some here.  
19 It seems to me it's two different things. It's  
20 self-authenticating that this is the data developed by the  
21 Census Bureau through its procedures.

22           MR. CARDIN: Yes, sir.

23           JUDGE SOUTHWICK: And if I understand this data  
24 correctly, it's even acknowledged by the Census Bureau or  
25 whoever made this statement in it, that it's not

1 necessarily accurate in the aspects that you in  
2 particular -- not you, but the defense wants to rely on.  
3 So it does seem to me two different things. Yes, this is  
4 the census data, and I think that the other side would  
5 concede that. But how we use it is an entirely different  
6 question.

7           So *Shelby County*, I can't say I recall exactly how  
8 it was used there. But it's one thing to say, here are the  
9 population figures, here are the way redistricting has to  
10 be done among the states. It's something else to say, in  
11 the very granular way that you want to use this data, that  
12 it's accurate enough. And that's what the other side wants  
13 to dispute. What's wrong with that?

14           MR. CARDIN: Well, Your Honor, we don't see any that  
15 there's any issue with that because the Court as the fact  
16 finder, as the trier of fact, the Court can assign whatever  
17 weight it wishes to the reliability or the  
18 trustworthiness --

19           JUDGE JORDAN: How do you address 201(f) that says  
20 in a jury trial when judicial notice is taken, you have to  
21 instruct the jury that that fact has been conclusively  
22 decided. The other side is not allowed to put on contrary  
23 evidence.

24           MR. CARDIN: Well, first of all, Your Honor, this is  
25 not a jury trial.

1 JUDGE JORDAN: I understand. But you understand the  
2 policy behind the rule is the same.

3 MR. CARDIN: Well, but with regard to that policy,  
4 Your Honor, the facts that are being reported, the facts  
5 that we're asking the Court to take judicial notice of, it  
6 can't be questioned that those facts are reported regularly  
7 by the Census Bureau. And so in terms of anything further  
8 than that, this Court as fact finder is free to consider  
9 whatever objections there may be to the data --

10 JUDGE JORDAN: So all you're asking -- and I'm sorry  
11 to interrupt -- but all you're asking us to do is take  
12 judicial notice that the census put these numbers out  
13 there?

14 MR. CARDIN: Essentially, yes, Your Honor. That  
15 those are numbers that are reported by the Census Bureau in  
16 its regular course of business every two years. And we  
17 believe that that's proper for judicial notice, Your Honor,  
18 because those are the facts that are out there and that are  
19 reported. And anything beyond that, certainly, the  
20 plaintiffs are going to be free to present whatever  
21 evidence they wish.

22 JUDGE SOUTHWICK: Why is this -- it seems to me  
23 you're saying that this is little more than  
24 self-authentication. That this document should be taken  
25 for its purposes, which is the report by the Census Bureau



1 of its numbers. And why isn't it enough for it to be  
2 self-authenticating? What are you trying to gain -- I'm  
3 not trying to get into your inner workings, but what is the  
4 extra that you're asserting you're entitled to by judicial  
5 notice.

6 MR. CARDIN: Well, Your Honor, this is evidence --  
7 this is a critical piece of evidence with regard to a  
8 significant issue in the case, and that is the degree of  
9 voter registration and voter turnout that's taking place in  
10 Mississippi now and that has over the past years. And so  
11 with regard to what we intend to achieve with that, we  
12 believe that the data being official data from the Census  
13 Bureau, coming from a governmental agency, and being  
14 reported in the course of its business is data that is  
15 informative. And it's data that is relevant, and it's data  
16 that's important to consider. And we think that that is --  
17 by offering that, we're putting that evidence before the  
18 Court and then the determinations on anything beyond that  
19 can be made by the Court as fact finder.

20 JUDGE JORDAN: All right. Anything else?

21 MR. CARDIN: Your Honor, I don't believe I have  
22 anything else other than we do believe there are  
23 distinguishing characteristics between the cases that the  
24 plaintiffs have cited in response to our motion, and we've  
25 set those forth in the briefs.

1 Does the Court wish for me to respond to the other  
2 motion or are you going to take that separately?

3 JUDGE JORDAN: Take it separate.

4 MR. CARDIN: Okay. Thank you, Your Honor.

5 MR. SAVITZKY: Good morning, Your Honors. May it  
6 please the Court, Ari Savitzky for the plaintiffs. Your  
7 Honors, the watchword of judicial notice of Rule 201 is the  
8 fact reasonably disputed. Is it subject to reasonable  
9 dispute? The accuracy of this CPS survey data -- and what  
10 we're talking about here is data from a survey of a sample  
11 of voters asking them did you register; did you vote? It's  
12 hotly contested. The expert that the defendants ultimately  
13 decided not to offer in this case said this is a  
14 controversial issue in political science. Multiple of the  
15 experts in plaintiffs' case have said that this data is not  
16 accurate. And the reason the court in Georgia just  
17 recently in a Section 2 case declined to take judicial  
18 notice of this data is because it is not accurate. It  
19 didn't -- the number of voters who actually voted according  
20 to the survey, if you took the survey at face value, was  
21 deeply inconsistent with the numbers from the Georgia  
22 Secretary of State. And that is precisely the case in  
23 Mississippi as well.

24 JUDGE JORDAN: But what Mr. Cardin is -- in some  
25 sense, y'all, your briefs are like two ships passing in the

1 night. You may be correct that we can't take judicial  
2 notice as to the accuracy of the data, but he's taken a  
3 step back saying he's not asking us to do that. He says  
4 you can put on evidence. All he's saying is we should take  
5 judicial notice that this is what the Census Bureau said.

6 MR. SAVITZKY: And, Your Honor, if the request was  
7 to take judicial notice of the fact that the Current  
8 Population Survey includes a question on voting and  
9 registration, or a series of questions on voting and  
10 registration, that would be a different matter. I don't  
11 think there's any dispute as to that.

12 But what defendants are asking -- and I believe  
13 Mr. Cardin said that, that the defendants want you to  
14 consider the accuracy of this data. They want you to  
15 consider that as a relevant piece of evidence in this case.  
16 And the accuracy of the data is deeply, hotly disputed,  
17 subject to more than reasonable dispute so --

18 JUDGE SOUTHWICK: Excuse me. Mr. Cardin referred to  
19 *Shelby County*. Was that just raw numbers, or do you know  
20 how the *Shelby County* opinion used in this maybe not  
21 equivalent data?

22 MR. SAVITZKY: So as I understand it, the *Shelby*  
23 *County* opinion did reference the Current Population Survey  
24 data. There's no indication in *Shelby County* that the  
25 Court was taking judicial notice under Rule 201. It

1 appears -- and, again, it's not totally clear to me, but it  
2 appears as part of the record below and it was in the  
3 parties briefs below. So that's not an instance where you  
4 have a court ruling pursuant to Federal Rule of Evidence  
5 201, this is information -- and, again, if defendants had  
6 wanted to present this information through an expert who  
7 could discuss the accuracy of the data and explain why this  
8 particular survey should be considered accurate,  
9 notwithstanding the fact that these are just voter  
10 statements of whether they voted and they're not  
11 independently verified, that would be a different matter,  
12 and then that would be in the evidentiary record in the  
13 case. But what you're being asked to do is to take  
14 judicial notice of this particular -- the data and then to  
15 consider its accuracy.

16 JUDGE SOUTHWICK: Counsel, do you have any objection  
17 to it being admitted as self-authenticating and the data is  
18 what the data can be shown to be by expert testimony?

19 MR. SAVITZKY: Well, I don't think there is any  
20 expert testimony being offered to establish the accuracy  
21 of --

22 JUDGE SOUTHWICK: So the only testimony perhaps  
23 would be from your side to show where it's wrong, but  
24 there's no supportive testimony or witnesses from the  
25 defense side?

1 MR. SAVITZKY: Correct, Your Honor.

2 JUDGE JORDAN: Are you taking the position that it's  
3 not a self-authenticating document?

4 MR. SAVITZKY: You know, Your Honor, the data is  
5 reported by the CPS, and it says what it says. But it's  
6 not a self-explaining document, right? I don't think -- we  
7 do not question the authenticity of the numbers that are  
8 reported in the survey. What's disputed is the accuracy of  
9 those numbers, and they're not what's relevant in the case.  
10 There's no relevance to the mere fact the CPS publishes  
11 these numbers. The relevance of the numbers is the extent  
12 to which they can be relied on as accurate. And that is  
13 precisely what the defendants want the Court to consider,  
14 and it's precisely what the Court can't do through rule 201  
15 and judicial notice.

16 JUDGE JORDAN: All right.

17 MR. CARDIN: May it please the Court, Your Honor,  
18 just a couple of items. With regard to the Georgia case  
19 that counsel mentions, I think that that is fine example of  
20 why we're asking for the Court to take judicial notice. In  
21 Georgia, Georgia actually records voter registration by  
22 race, and so there are official state records that have  
23 recordings to that effect that you have access to.  
24 Mississippi does not, and so that's why this evidence is  
25 important. This data is important, at least to be before

1 the Court, for the Court to consider it.

2 With regard to *Shelby County* against *Holder*, the  
3 United States Supreme Court specifically cited this very  
4 table, table 4, the very table that we're seeking to  
5 request judicial notice of, and pointed out that those  
6 figures indicate that African-American voter turnout  
7 exceeded white voter turnout in five of the six states  
8 originally covered by Section 5, specifically citing  
9 Mississippi in the table. So, Your Honor, we think that --

10 JUDGE SOUTHWICK: Can I stop you there, Mr. Cardin?  
11 Your friend on the other side said he thought perhaps  
12 there's more record development. Do you know offhand if  
13 that's true or will a witness testify that's true?

14 MR. CARDIN: Your Honor, I'm not aware specifically.  
15 I think it came up by way through motions, in terms of  
16 summary judgment motion at the lower court level, but  
17 specifically how it got there, I'm not exactly sure about  
18 that. But the point --

19 JUDGE JORDAN: Isn't that a pretty big issue? If it  
20 was in the record below before it got to the Supreme Court  
21 and it was properly in that record because there was a  
22 witness who could testify as to those numbers, that's a  
23 very different situation than asking us to take judicial  
24 notice.

25 MR. CARDIN: Your Honor, with regard to the actual

1 judicial notice of the data, the data in and of itself  
2 appears in this opinion and is relied on by the U.S.  
3 Supreme Court. And so regardless of how it got there, it  
4 is relied on for the very -- the very issue we're talking  
5 about here. And so we believe that that supports the idea  
6 of affording judicial notice to it.

7 Now, I would say alternatively, Your Honor, if the  
8 Court doesn't think that this should come in by way of  
9 judicial notice, we would assert that it is  
10 self-authenticating under Rule 902(5), and we think it  
11 would be proper to be admitted into evidence in that  
12 regard.

13 JUDGE JORDAN: All right. Thank you.

14 MR. CARDIN: Thank you.

15 JUDGE JORDAN: All right. Who's going to argue the  
16 plaintiffs' motion?

17 MR. SAVITZKY: Your Honor, I'll argue the  
18 plaintiffs' motion. May it please the Court, the two  
19 judicial notice motions before you are somewhat different  
20 in the sense that the plaintiffs motion involves facts that  
21 are uncontested, undisputed. The plaintiffs' motion is  
22 straightforward. The facts we ask you to notice are,  
23 first, some basic facts about how special elections are run  
24 in Mississippi, set forth in the Mississippi Code;  
25 Secretary of State's own documents, which defendants do not

1 and cannot dispute. These are facts like the fact that  
2 special elections are conducted on a nonpartisan basis to  
3 fill vacancy, or that they can occur on as little as  
4 60-days notice.

5 We ask the Court to take judicial notice of facts  
6 about the occurrence of particular special elections in  
7 2020 and 2021 to fill certain vacancies that arose in state  
8 legislative seats. Those facts are also not disputed.  
9 They're set forth in writs of election issued by the  
10 Governor, as well as newspaper articles indicating when  
11 those elections occurred.

12 And, finally, we ask the Court to take judicial  
13 notice of basic facts about the existence and function of  
14 Mississippi's planning and development districts, which are  
15 set forth in public documents issued by state agencies like  
16 the Mississippi State Ethics Commission as well as the  
17 website of the and the Mississippi Association of Planning  
18 and Development Districts, which, again, the defendants  
19 don't and cannot contest. These are all facts of which  
20 there is no reasonable dispute.

21 I think the argument on the other side with respect  
22 to the facts about special election procedures is they're  
23 nonadjudicative. They are adjudicative facts. The Court  
24 at the pretrial conference was rightly concerned about  
25 potential facts having to do with the ability to put a



1     remedy into place if we prevail on the merits. While the  
2     Court can certainly hear additional argument and evidence  
3     about remedy, there's no reason why facts that go to remedy  
4     and the ability to put a remedy in place cannot be  
5     adjudicated now at trial. And that would make sense, and  
6     judicial efficiency would support doing it.

7             And with respect to the planning and development  
8     document --

9             JUDGE SOUTHWICK: It seems to me this first part,  
10     not the PDDs but the special election piece, is a remedy  
11     piece as you're acknowledging. The statutes are there. I  
12     don't think we need to take judicial notice of the statutes  
13     in the formal motion. The rest of it is to show it's the  
14     real deal, that Mississippi really has these elections. I  
15     don't see much relevance to your evidence of the conducting  
16     of special elections. I don't see what it adds to what we  
17     ought to be considering, beyond knowledge that the statute  
18     exists.

19             MR. SAVITZKY: Well, Your Honor, I do think it  
20     shows, as you say, it's the real deal. In other words,  
21     these procedures are followed, that they have been followed  
22     recently.

23             JUDGE SOUTHWICK: Will there be some question of  
24     that beyond just knowing about the statute says? Is that  
25     why you want this evidence? I'm a little concerned about

1     why this evidence needs to come in if it's only to show  
2     this is an operative statute and not being used --

3             MR. SAVITZKY: Well, I think not merely that it's  
4     operative as a legal matter, but that it's been used  
5     recently. It's in practice. It's a common practice that's  
6     been used, that election administrators use these statutes  
7     and procedures to hold these elections on these particular  
8     timeframes and have done so in the recent past and have  
9     experience with doing so. And I think those facts can give  
10    the Court comfort that there won't be any undue burden in  
11    ordering a special election into place, and these  
12    procedures are one option for the Court to do so. So I  
13    think it's relevant in that sense.

14            I certainly think it might not be necessary, and the  
15    Court could take notice of the Code and rely on those. But  
16    those additional facts are helpful in providing evidence  
17    that these procedures can, in fact, be used.

18            JUDGE SOUTHWICK: I've heard enough in the expert  
19    depositions and declarations to understand how your side is  
20    using the Planning and Development Districts' blue lines  
21    (indiscernible). It does seem to me that their role in  
22    this and their relevance, whether the generation of these  
23    50 years ago -- I don't know if the boundaries have been  
24    altered any -- has any current relevance in the compactness  
25    of districts or cracking or packing minority populations.

1 I'm not sold yet, and I'm a little worried about taking  
2 judicial notice of newspaper articles and some of the  
3 things that are being offered as to why PDDs are useful in  
4 the kind of analysis that we need to make.

5 If we were to take judicial notice, how far would  
6 that take you? We certainly can take notice they exist.  
7 But if they're going to be relevant to your case, we need  
8 to give that some importance to the existence of it, and  
9 I'm not sure I see the purpose of these old districts that  
10 were created for a different purpose that your experts  
11 used. I understand that, so it's very important to you.  
12 But I don't understand why they used them.

13 MR. SAVITZKY: Well, I mean, first of all, I would  
14 point the Court to Exhibit L to our motion which shows  
15 they're not merely sort of old districts that no longer  
16 have a function. They -- they play a role today. They  
17 administer different state -- different programs and  
18 services. They coordinate services, planning, and  
19 development services in each of these different areas and  
20 they tie these different counties grouped in these regions  
21 together.

22 I think the particular way in which the -- the  
23 plaintiff's mapper took those in to account just in  
24 considering the demographics and distributions of the state  
25 and the connections between different communities are --

1 will certainly come out when -- when plaintiff's expert  
2 comes on but these are the -- the regional planning  
3 districts for the state. They're quasi-public entities.  
4 They have been used in other cases, similar regional  
5 commissions, just to reconsider the geography of the state  
6 on a regional level, and I don't think there's anything  
7 dispositive about it one way or another. It's just another  
8 way to look at the state.

9 Obviously maps are an incredibly important part of  
10 these cases and thinking about the geography of the state  
11 in different ways is -- is potentially relevant.

12 JUDGE JORDAN: My concern is this: The motion was  
13 filed late, not delinquent, but late in the day. I  
14 instructed the defendants to file a response over the  
15 weekend, which they did, but, you know, I'm sure they were  
16 preparing for trial. It's a pretty generic response. I'm  
17 not sure in my mind that I have each fact that you're  
18 asking us to take judicial notice of sort of squared up  
19 with their arguments.

20 For example, the whole Section 2, a lot of that is  
21 based on newspaper articles and the Fifth Circuit has said,  
22 you can't take judicial notice based on a newspaper  
23 article. The PDD section, you rely heavily on Exhibit L,  
24 but I don't know enough about that association to know  
25 whether I can take judicial notice of its publication.

1           So that's my concern is you're asking us to take  
2     judicial notice about 40 or 50 different things, but I  
3     don't have a clear understanding of whether you're  
4     entitled. I don't know anything about PDDs, you know,  
5     other than what you put in there from newspaper articles  
6     and other stuff, but I don't know if that's enough for  
7     judicial notice.

8           MR. SAVITZKY: Well, Your Honor, I do think -- first  
9     of all, we cited as well the Mississippi State Ethics  
10    Commission dealing with PDDs indicating that they're  
11    subject to ethics rules in the state because their  
12    quasi-public bodies executive order on --

13          JUDGE JORDAN: Sure. But I don't know that that  
14    gets to the heart of why you want this, and I'm not sure  
15    you need it. Cooper, I assume, is going to testify about  
16    all this stuff, and so why should we take judicial notice  
17    that his testimony is accurate? And it would be more  
18    appropriate for us to -- to argue this issue after he  
19    testifies.

20          MR. SAVITZKY: Well, Your Honor, I certainly think  
21    you could reserve on the question of whether you want to  
22    take judicial notice of these facts of the PDDs until after  
23    you hear Mr. Cooper's testimony and consider whether you  
24    need that in the record. And I would agree with Your Honor  
25    that nothing about the ultimate case on *Gingles* 1 turns on

1 the admission of this into evidence. We think it's helpful  
2 and relevant to provide that additional context, and if the  
3 Court's concern is wanting to see how exactly it fits in on  
4 *Gingles* 1, I think it would be appropriate to reserve on  
5 that question and make a decision after Mr. Cooper  
6 testifies.

7 One other point, Your Honor, just on the special  
8 elections. I mean, in addition to those newspaper  
9 articles, there are writs of elections, and I would point  
10 out as well that this is a case where no one disputes the  
11 elections occurred. No one disputes the timeframe and so  
12 the dates that public events occurred is precisely the type  
13 of facts the Courts do take judicial notice of.

14 JUDGE JORDAN: All right. Thank you.

15 MR. SAVITZKY: Thank you, Your Honor.

16 MR. CARDIN: May it please the Court, Your Honor.  
17 We do not believe that either of the categories that  
18 they're seeking judicial notice of are proper under Rule  
19 201. First of all, for judicial notice, with regard to the  
20 special elections, those special election statutes relate  
21 to whether or not there's going to be a remedy, and there's  
22 been no adjudication yet that a remedy is even going to be  
23 proper. And even if there's -- when there's an  
24 adjudication of a remedy, if that happens, then the  
25 question is going to be what's the remedy?

1           And so we think, A, it's not proper for judicial  
2     notice at this juncture. It's certainly premature to be  
3     considering that when we haven't even gotten through the  
4     liability phase yet.

5           With regard to the PDD information, Your Honor, the  
6     PDD directory that they're seeking to get -- take judicial  
7     notice of is a -- a directory by the Mississippi  
8     Association of PDDs. It's a trade association for the  
9     PDDs, and that's just simply not an adjudicative fact that  
10    meets the requirements for judicial notice under 201. So  
11    we don't think that either of the categories that they're  
12    requesting the court to take judicial notice of are proper,  
13    and we would request that their motion be denied.

14           JUDGE JORDAN: All right. Thank you. Any rebuttal?

15           MR. SAVITZKY: Just briefly, Your Honor, on the  
16     question of remedy. I mean, I do think it is -- it is  
17     prudent given the timeframe that we are on to consider  
18     facts that might go to remedy, to the extent they can be  
19     adjudicated in this proceeding because if -- and of course,  
20     we have not -- the evidence is not yet in. But if we do  
21     prevail, we've indicated that we will seek a special  
22     election, and the timeframe on that is quite tight.

23           So I think it makes good sense to consider those  
24     facts, and obviously both parties can -- can develop  
25     evidence on that. So I think whether or not it's an

1 adjudicative fact turns entirely on whether the Court  
2 wishes to consider it as part of the record and if there  
3 are facts that are potentially in dispute then that -- that  
4 goes to issues the Court ought to decide then the Court  
5 should consider them.

6 On the PDDs, I don't think that I have much to add.  
7 The website and the directory contains facts that no one  
8 disputes about which counties are in which PDD, the basic  
9 functions of the PDDs and again, those are set out as well  
10 in other state documents.

11 JUDGE JORDAN: Okay. Thank you.

12 MR. SAVITZKY: Thank you, Your Honor.

13 JUDGE JORDAN: Ms. Powell handed me a note that the  
14 attorneys had not signed the pretrial order. I guess, is  
15 there any objection to attaching electronic signatures?

16 MR. SAVITZKY: No, Your Honor.

17 MR. CARDIN: No objection, Your Honor.

18 MR. WALLACE: None, Your Honor.

19 JUDGE JORDAN: Okay. All right. Are the plaintiffs  
20 ready for their opening?

21 MS. NWACHUKWU: Yes, Your Honor.

22 JUDGE JORDAN: I think at the pretrial conference,  
23 it would be 45 minutes; is that right?

24 MS. NWACHUKWU: Yes, Your Honor.

25 JUDGE JORDAN: Okay.



1 MS. NWACHUKWU: Good morning, Your Honors, and may  
2 it please the Court. Before I begin, the plaintiffs have a  
3 demonstrative slide deck that will be put on the screen. I  
4 also have paper copies of that slide deck if Your Honors  
5 would prefer to have a paper copy to look at as well. I'm  
6 happy to provide that information to the courtroom clerk.

7 JUDGE JORDAN: If it's not in our binders then I  
8 would like to have a copy of it.

9 MS. NWACHUKWU: It should be in those binders, but,  
10 again, I'm happy to provide those copies as well.

11 JUDGE SOUTHWICK: If we had what we need, that would  
12 be helpful.

13 MS. NWACHUKWU: Again, in order to be on the safe  
14 side, it's probably best to provide those paper copies.  
15 Thank you. May I approach?

16 JUDGE JORDAN: You may proceed.

17 MS. NWACHUKWU: Again, good morning, Your Honors.  
18 May it please the Court. I am Jennifer Nwachukwu with the  
19 Lawyers Committee for Civil Rights of Law on behalf of the  
20 plaintiffs. This is a case about the state's legislative  
21 maps, but more importantly, it is a case about Black  
22 Mississippians having a full and fair opportunity to  
23 participate in the political process without their votes  
24 being diluted. As we will prove, the state's legislative  
25 maps violate both Section 2 of the Voting Rights Act and

1 the Fourteenth Amendment.

2 While our claims cover a number of districts across  
3 the state, they share very important characteristics. The  
4 challenged districts are located in areas of the state  
5 where the Black population is concentrated and has actually  
6 been growing faster than the white population, which has  
7 actually decreased over the last decade. Despite this, the  
8 state has level-set the number of Black majority districts.  
9 These maps dilute the votes of Black voters. They fragment  
10 sizeable concentrated Black communities and areas across  
11 the state, areas where reasonably configured black-majority  
12 districts can be drawn, and where pervasive,  
13 racially-polarized voting will operate to submerge those  
14 Black communities in districts where they will have no  
15 opportunities to elect a candidate of choice.

16 In those areas, in those state legislative  
17 elections, the political playing field is not equal, and  
18 that is the essence of vote dilution. Not only that, but  
19 the state has also taken affirmative steps, such as  
20 spreading Black voters across a number of districts to  
21 dilute the power of their vote. In some of these district,  
22 the state subordinated traditional districting  
23 principles --

24 THE REPORTER: Slow down just a little bit for me,  
25 please.

1 MS. NWACHUKWU: Okay. In some of these districts,  
2 the state subordinated traditional redistricting  
3 principles, like compactness and keeping communities whole  
4 to racially consideration. This violates the  
5 constitutional prohibitions on unjustified uses of race.

6 Now, let's talk about how the evidence will prove up  
7 these claims. Starting first with our Section 2 claim, we  
8 will show vote dilution in four areas in the state senate  
9 map: DeSoto County, Northern -- northeastern Mississippi  
10 around Chickasaw and Monroe counties, South central  
11 Mississippi, and the Hattiesburg area. And we will also  
12 show vote dilution in the three areas of the House map: In  
13 the Western Hinds County area near Clinton, again in  
14 Northeastern Mississippi around the Chickasaw County and  
15 Monroe County areas, and in east central Mississippi.

16 And the evidence will show that each of these areas  
17 are areas where an additional reasonably configured  
18 Black-majority district can be drawn. We will produce  
19 evidence that will meet the three preconditions established  
20 in *Thornburg versus Gingles* for each of the challenged  
21 areas, and we will demonstrate that the totality of the  
22 circumstances shows that Black voters in those areas are  
23 denied an equal opportunity to participate in the political  
24 process and to elect candidates of their choice.

25 The Court will hear first from Mr. Bill Cooper, a

1 demographer with over 35 years of experience of drawing  
2 plans and in serving as a testifying expert on *Gingles* 1,  
3 including most notably in the *Milligan* case in Alabama.

4 Mr. Cooper has testified in over 55 federal court  
5 redistricting cases, including 10 cases right here in  
6 Mississippi, and he has drawn plans in scores of  
7 jurisdictions in Mississippi alone.

8 Now, I'll spare us going through the maps in a lot  
9 of detail because Mr. Cooper is the first witness, but I do  
10 want to briefly run through the areas of interest in this  
11 case.

12 So the first area of interest is the area around  
13 DeSoto County, which experienced the highest increase of  
14 Black population in the last decade and the highest  
15 increase of Black population of any county in the state.  
16 And it might be helpful for the Court, as it hears  
17 Mr. Cooper's testimony, for me to explain what this is and  
18 what the following maps will show.

19 The map that is on the left is entitled, "The 2022  
20 Plan," and it shows the enacted plan districts here in the  
21 north delta area around Senate District 2, and each  
22 differently colored district represents a different  
23 district.

24 Now, in the 2022 plan, you will see a red -- a dark  
25 red line, and that is the border of Mr. Coopers'

1 illustrative Senate District 2, which is superimposed on  
2 the left side of that image over the enacted map. And if  
3 you look at the image on the right side entitled,  
4 "Illustrative Senate District 2," you'll see that the same  
5 Illustrative District 2 is within Cooper's illustrative  
6 plan.

7 Looking at these maps and as Mr. Cooper will  
8 explain, the 2022 plan plots a growing and sizable Black  
9 population in Horn Lake and DeSoto County. By contrast,  
10 and as shown on the right, Mr. Coopers' plan keeps more  
11 communities whole and eliminates multiple county splits and  
12 precinct splits all while adding a compact, new  
13 Black-majority Senate District 2.

14 JUDGE JORDAN: And I'm sorry to interrupt, but if  
15 you go back for a second?

16 MS. NWACHUKWU: Yes.

17 JUDGE JORDAN: And I hate to sound dense, but  
18 looking at the 2022 plan, I get the overlay, I get the  
19 illustrative plan is overlaid on top of it. But where is  
20 the district under the plan?

21 MS. NWACHUKWU: So the illustrative district that --

22 JUDGE JORDAN: No, I got that part. The '22 plan  
23 district, where is that on the left?

24 MS. NWACHUKWU: On the left of the 2022 plan, it's  
25 up towards the top of the image. If you can see around

1 where Horn Lake is, the district is in a question-mark  
2 shape that's up at the top of that image.

3 JUDGE JORDAN: The Senate District?

4 MS. NWACHUKWU: Yes. Yes, Your Honor.

5 JUDGE JORDAN: And I'm sorry, so what color is the  
6 Senate District in?

7 MS. NWACHUKWU: The Senate District is in a light  
8 green shade up at the top of the district, so the blue --

9 JUDGE JORDAN: Go ahead.

10 MS. NWACHUKWU: The blue district that is Senate  
11 District 1. Senate District 2 is right -- located right  
12 above that.

13 JUDGE JORDAN: And then it drops down to the left?

14 MS. NWACHUKWU: In the 20 --

15 JUDGE JORDAN: Into Tunica and that area?

16 MS. NWACHUKWU: In the 2022 plan, the area that  
17 drops down to the left is currently Senate District 11.  
18 And this image indicates that the illustrative map that  
19 Mr. Cooper has drawn, we have put an image of Mr. Cooper's  
20 Illustrative Senate District 2 on top of this 2022 plan, so  
21 that you can see where it's located. And we also have an  
22 image of that on the right side, so you can see exactly  
23 where Illustrative Senate District 2 is.

24 So the second area of interest is in Hattiesburg  
25 where there's a sizable and concentrated Black population.

1 The 2022 Senate plan splits Hattiesburg across a number of  
2 districts, including one that stretches all the way up to  
3 Jasper County. By looking at the map on the right,  
4 Mr. Cooper's plan adds a new majority-Black Senate District  
5 9 that is compact and centered in Hattiesburg itself.

6 Next slide. The third area of interest is in  
7 northeastern Mississippi and the area around Chickasaw and  
8 Monroe Counties, which also experienced an increase in the  
9 Black population over the last decade. Looking at the  
10 illustrative plan on the right, Mr. Cooper adds a new,  
11 compact Black-majority district in this area as well.

12 Next slide. The fourth area of interest is in south  
13 central Mississippi near Copiah, Simpson, Lincoln, and  
14 Jefferson Davis Counties where there's a sizable and  
15 concentrated Black population. As shown on the right,  
16 Mr. Cooper adds an additional compact Black-majority  
17 district in this area while keeping Copiah County whole and  
18 connecting communities like Crystal Springs and Hazelhurst  
19 with Brookhaven going down I-55 and U.S. 51.

20 Next slide. Turning to the house map, the fifth  
21 area of interest is again near Chickasaw and Monroe  
22 Counties, which experienced an increase in the Black  
23 population over the last decade, and the evidence will show  
24 that the 2022 plan cracks Black communities in areas like  
25 Chickasaw County. But looking at the illustrative plan on

1 the right, Mr. Cooper adds a compact additional  
2 Black-majority district in this area.

3 Next slide. The sixth area of interest is in the  
4 Clinton area in western Hinds County, which has a sizable  
5 and concentrated Black population. Looking at the  
6 illustrative map on the right, Mr. Cooper adds an  
7 additional Black-majority district that is visually compact  
8 and anchored in the diversified and growing community of  
9 Clinton.

10 Next side. The seventh area of interest is near  
11 east central area of Mississippi near Newton, Jasper, and  
12 Clarke counties, which also have a sizable and concentrated  
13 Black population. Again, looking at the map on the right,  
14 Mr. Cooper eliminates county splits while also adding a  
15 compact Black-majority district.

16 Mr. Cooper will testify that in accordance with the  
17 first *Gingles* precondition, the additional majority Black  
18 districts that he has drawn in the areas of interest are  
19 all reasonably configured. He will explain how his  
20 illustrative maps comply with traditional redistricting  
21 principles, take into account communities of interest, and  
22 even fare better than the state's maps on a number of  
23 metrics, including compactness, county splits, precinct  
24 splits, and more.

25 The Court will also hear from Dr. Lisa Handley on



1 the second and third *Gingles* conditions. Like Mr. Cooper,  
2 Dr. Handley has decades of experience conducting racially  
3 polarized voting analyses required by those preconditions  
4 and testifying in Section 2 cases, most notably in the  
5 *Ardoin* cases in Louisiana.

6 Dr. Handley undertook a sophisticated and  
7 comprehensive statistical analysis of over 40 different  
8 elections, including statewide contests, state legislative  
9 contests, nonpartisan judicial contests, and party  
10 primaries. She will explain how across all levels of  
11 election contests, Black Mississippians coalesce and vote  
12 cohesively around particular candidates, and white voters  
13 usually vote in a block to defeat Black voter candidates of  
14 voice outside of black-majority districts.

15 Dr. Handley will also testify about her  
16 effectiveness analysis, which compares the state's enacted  
17 plans to Mr. Cooper's illustrative plans for the challenged  
18 areas. Her testimony will confirm that Mr. Cooper's  
19 illustrative maps provide Black Mississippians with  
20 additional opportunities to elect their candidates of  
21 choice in each of the seven areas of focus.

22 Now, establishing these preconditions goes a long  
23 way, and it's the very unusual case where a Section 2  
24 plaintiff proves up the *Gingles* precondition and shows the  
25 dilution dynamic and yet does not ultimately demonstrate

1 liability. But the *Gingles* preconditions are not the end  
2 of the inquiry.

3 And moving on to the totality of the circumstances  
4 inquiry, the Court will hear from additional experts  
5 Dr. Robby Lockett, Dr. D'Andra Orey, and Dr. Marvin King,  
6 all of whom will be testifying as to the various Senate  
7 factors that *Gingles* deems relevant to Section 2  
8 vote-dilution cases.

9 Dr. Robby Lockett is a tenured history professor and  
10 the director of the Margaret Walker Center at Jackson State  
11 University. His academic research specializes in  
12 African-American history and the modern Civil Rights  
13 Movement with a specific focus on the state of Mississippi.  
14 On Senate Factors 1 and 3, he will detail the horrific and  
15 long history of discrimination against Black voters, some  
16 of which continues to the present and includes voting  
17 practices that range from all-white primaries in previous  
18 instances to felony disenfranchisement.

19 On Senate Factor 5, he will demonstrate the gross  
20 disparity in education between Black and white  
21 Mississippians that continues to this day and that affects  
22 Black voters participation. Dr. Lockett is particularly  
23 positioned to discuss this information with the Court as he  
24 recently sat on the board for the Jackson Public School  
25 District.

1           Dr. D'Andra Orey is a tenured professor of political  
2 science at Jackson State, a former chair of the department,  
3 the president-elect of the Southern Political Science  
4 Association, and a quantitative scholar who has published  
5 dozens of peer-reviewed articles, many focusing on race and  
6 political participation.

7           As to Senate Factor 5, he will explain how Black  
8 Mississippians bear the effect of discrimination in a  
9 number of socioeconomic areas, including income, poverty,  
10 education, and health. Marshalling extensive scholarship,  
11 establishing that these socioeconomic indicators affect  
12 voters' ability to participate in politics.

13           Dr. Orey will demonstrate through multiple  
14 statistical analyses that there was, in fact, at least a 10  
15 percent gap between voter turnout in white and Black  
16 Mississippians in the recent 2020 election, and he will  
17 present an original statistical analysis empirically  
18 demonstrating how the socioeconomic disparities that he  
19 focused on are correlated with Black turnout in  
20 Mississippi. Dr. Orey's analysis will also confirm that  
21 the needs of Black voters, as exemplified by the  
22 disparities in the areas like health and education are  
23 going unaddressed by policymakers in Mississippi.

24           And, finally, Dr. Marvin King is a tenured professor  
25 of political science and African-American studies at Ole

1 Miss. His academic research and coursework focuses on  
2 subjects such as American and African-American politics,  
3 voting, and redistricting. He will provide additional  
4 evidence under Senate Factors 1 and 3 as to the history of  
5 discrimination in voting and Mississippi's voting practices  
6 that enhance the opportunity for discrimination, racial  
7 appeals in campaigns in accordance with Senate Factor 6,  
8 the lack of success of Black candidates in Mississippi  
9 politics in accordance with Senate Factor 7, and the  
10 tenuousness of the state's justification for the challenged  
11 redistricting plans in accordance with Senate Factor 9.

12 Dr. King will also testify about race and its  
13 connection to partisanship and decisionmaking for Black  
14 voters in Mississippi, refuting the suggestion that the  
15 stark patterns of racially polarized voting in Mississippi,  
16 which tilt the political playing field against Black voters  
17 in the areas of interest, are some mere coincidence of  
18 partisanship.

19 This case is ultimately about the voters, and this  
20 Court will have the opportunity to hear from them. We will  
21 put on the stand eight Black voters from many of the areas  
22 of the state that are implicated in this case, including  
23 all of the areas that are at issue for the Section 2  
24 claims. Their testimony will not only provide further  
25 context and support for the experts' testimony but will

1 also demonstrate the human impacts of these unfair and  
2 unlawful districts. They will testify about the  
3 connections to their communities; where Black voters in  
4 their community live, work, and play; the issues and needs  
5 of their communities; and how the illustrative maps fare  
6 better for their communities, and would also make the  
7 political processes more equally open for Black voters.

8 All of this testimony, both expert and fact, will  
9 ultimately support a finding of vote dilution based on a  
10 preponderance of the evidence and a ruling that the  
11 defendants violated Section 2 of the Voting Rights Act as  
12 to each of the areas of interest.

13 The evidence will also support a finding that in  
14 certain districts, race improperly predominated in the  
15 drawing of those district lines. And on that point, the  
16 Court will hear from Dr. Jordan Ragusa who is the associate  
17 chair of the political science department at the College of  
18 Charleston. Dr. Ragusa's academic research enforces focus  
19 on American politics and quantitative methods. His  
20 analysis uses an improves upon a multivariate regression  
21 analysis that he conducted in the *South Carolina NAACP*  
22 *versus Alexander* case, in which a three-judge trial court  
23 panel accepted and credited his findings in their  
24 determination that a challenged congressional district was  
25 an unconstitutional racial gerrymander.

1           Dr. Ragusa's testimony will show that race was a  
2     significant factor in the design of Senate District 2,  
3     Senate District 48, House District 22, House District 34,  
4     and House District 64, even when controlling for  
5     partisanship and various traditional redistricting  
6     principles.

7           In each case, the state's actions including the  
8     gratuitous movement of thousand and in some cases even tens  
9     of thousands of voters led to large decreases in the Black  
10    voting age of those districts.

11          So let's take a look briefly at those districts as  
12    well.

13          In these maps, which were created by Dr. Ragusa and  
14    which he will discuss with the Court, the purple area is  
15    consistent between the prior legislative districting plan  
16    and the 2022 plan. The red areas were added in the 2022  
17    plan and the blue areas were removed.

18          So let's turn back and talk about Senate District 2  
19    in DeSoto County.

20          As mentioned before, DeSoto County experienced  
21    considerable growth in the Black population over the last  
22    decade and the enacted plan crafts the Black population in  
23    Horn Lake across three Senate Districts and adds white  
24    voters from Olive Branch and Hernando, reconfiguring the  
25    district in a question mark shape while decreasing the

1 Black voting age percentage despite Black population growth  
2 in that area.

3 Next slide.

4 The Gulfport area in Harrison County experienced one  
5 of the largest increases in the Black population over the  
6 last decade. The enacted plan has a significant white  
7 voters from across Bay St. Louis and Hancock County while  
8 cutting Gulfport down the middle.

9 Next slide.

10 Mentioned before, the Chickasaw and Monroe County  
11 area had experienced growth in the Black population over  
12 the last decade. The enacted plan removes Black voters  
13 from areas with high Black population in Pontotoc and  
14 Chickasaw counties and adds mostly white voters from Monroe  
15 County cracking Chickasaw in three different places.

16 Next slide.

17 The Grenada area also has a significant  
18 concentration of Black voters. The enacted plan adds  
19 population from Yalobusha and Lafayette and moved Black  
20 voters to neighboring districts, decreasing the Black  
21 voting age percentage of the district by over 30 points.

22 Next slide.

23 And finally, the eastern Hinds and Madison County  
24 area has a significant concentration of Black voters. The  
25 enacted plan adds white voters from northeast Jackson and

1 Madison County elongating the district on both ends in  
2 order to decrease the number of Black voters, and that is  
3 not all.

4 Dr. Ragusa will also testify as to the changes in  
5 the raw data of each district's Black voting age population  
6 and the disproportionate movement of Black voters and split  
7 precincts of each district, where more Black voters in  
8 these split precincts were assigned to neighboring  
9 districts, many of which were already majority-Black  
10 districts.

11 His analysis of the racially differences in precinct  
12 splits indicate that map makers could not have made the  
13 granular decisions that they made without using race,  
14 particularly when considering that the state's data on  
15 partisan election results only go to the less granular  
16 level of the precinct.

17 Dr. Ragusa's analysis will be largely undisputed.  
18 The Court isn't going to hear testimony from the map makers  
19 to explain their decision-making for the design of the  
20 districts and the Court also isn't going to hear live  
21 testimony from the legislators that voted in favor of these  
22 maps either.

23 Not only that, Dr. Ragusa's analysis will be  
24 supported by Mr. Cooper who used his substantial map  
25 drawing skills to show how the plans in those areas could



1 have been drawn consistent with traditional redistricting  
2 principles. And Dr. Ragusa's analysis will also be  
3 supporting by the testimony of Black voters who live in the  
4 districts that we challenge as unconstitutional racial  
5 gerrymander. Their voices will lend important support to  
6 our proof that race was the primary means of drawing the  
7 districts that we challenge.

8 The evidence will show that race predominated over  
9 traditional redistricting principles in the design of the  
10 challenged districts, and that the state does not have a  
11 compelling state interest or justification for the changes  
12 made to the challenged districts in violation of the  
13 constitution.

14 Again, this case is ultimately about Black  
15 Mississippians not having an equal opportunity to  
16 participate in the political process. While we raise both  
17 Section 2 and constitutional claims, the harm in a larger  
18 sense is ultimately the same. The wrongful dilution and  
19 degradation of the votes cast by Black voters in  
20 Mississippi, whether this occurs by way of failure to  
21 comply with Section 2 of the Voting Rights Act and create  
22 the required additional Black majority districts or by  
23 cracking and packing the votes of Black voters by  
24 districting on the basis of race, these unlawful practices  
25 must be enjoined by this Court.

1           We look forward to presenting our proof to Your  
2 Honors. Thank you.

3           JUDGE JORDAN: All right. Thank you. It's 10:15.  
4 It's probably a good time for -- Mr. Cardin, you want to  
5 say something?

6           MR. CARDIN: No, sir.

7           JUDGE JORDAN: It's probably a good time for our  
8 midmorning break. We will come back at 10:35. Court's in  
9 recess.

10                           (A brief recess was taken.)

11           JUDGE JORDAN: All right. Thank you. You may be  
12 seated. Mr. Cardin.

13           MR. CARDIN: Your Honor, may it please the Court,  
14 I've already introduced myself. I've had a opportunity to  
15 visit with you earlier this morning. My name is Tommie  
16 Cardin, and it's my privilege to be here today and  
17 represent the Defendant, State Board of Election  
18 Commissioners, along with my cocounsel, Ryan Beckett,  
19 Parker Berry, and Rex Shannon.

20           And, Your Honor, Mr. Mike Wallace, of course,  
21 represents the Intervenor-Defendant, Mississippi Republican  
22 Party, and he and I have agreed to divide the time for  
23 opening statement if that's acceptable to the Court?

24           JUDGE JORDAN: That's fine. How do you want to  
25 divide it?

1 MR. CARDIN: Let's say 25/20.

2 JUDGE SOUTHWICK: Any left over for him?

3 MR. CARDIN: Y'all know Mr. Wallace, and I want to  
4 be as generous as I possibly can. Thank you, Your Honor.

5 Along these lines, as counsel has pointed out for  
6 the plaintiffs, the plaintiffs assert two categories of  
7 claims here: under Section 2 of the Voting Rights Act and  
8 then claims under the Fourteenth Amendment of the United  
9 States Constitution. I certainly want to talk about what  
10 we anticipate the proof is going to be with regard to those  
11 claims, but before I do so, I'd like to just share with the  
12 Court a brief synopsis of how we've gotten to this point,  
13 how we've arrived to where we are today.

14 To do that, I want to go back and let's just touch  
15 on the 2022 redistricting process that took place in the  
16 Mississippi Legislature. Typically, the census results are  
17 released some time around February or March, after the year  
18 of the census, which this time was 2020, and this time was  
19 2020. We all know what happened in 2020. 2020 was an  
20 unusual year and everything got disrupted, including the  
21 release of the census results. Instead of being released  
22 at the normal time period, they weren't released until  
23 August of 2021.

24 Now, the legislature had to go ahead, though, and  
25 start the redistricting process because of election

1 deadlines that were looming, first of all, with regard to  
2 congressional races, and then, secondly, statewide races.  
3 Congressional races were going to be in 2022. Statewide  
4 races were going to take place in 2023.

5         So what the legislature did is form the Standing  
6 Joint Committee in June of 2021. The Standing Joint  
7 Committee is the joint legislative committee that the House  
8 and Senate forms and is actually charged with the statutory  
9 responsibility of redrawing districts. Redistricting not  
10 only state legislature House and Senate seats, but also  
11 congressional seats. So the legislature, after convening  
12 that committee, the Standing Joint Committee, went ahead  
13 and scheduled nine public hearings which would take place  
14 all across the state.

15         Those nine public hearings weren't required by law,  
16 but they used to be when Section 5 applied to the state.  
17 But since Section 5 no longer applies, not necessarily law  
18 you have to have public hearings anymore, but the  
19 legislature decided to do it anyhow. Thought it would be a  
20 good thing to get input from the public with regard to the  
21 process, so we scheduled nine public hearings across the  
22 state.

23         In August of 2021, the census results came out. And  
24 so then that's when the legislature was able to share the  
25 census results as part of the public hearings that remained

1 and really start looking at what the numbers actually were.  
2 When the legislature, in January of 2022, their first order  
3 of business was to go ahead and adopt a congressional  
4 redistricting plan because of the congressional election.  
5 Qualifying period was going to start March 1, and the  
6 elections were going to be later that year, so something  
7 had to be done with that with regard to the first order of  
8 business.

9 After they adopted the congressional redistricting  
10 plans, which was sometime in January of 2022, then the  
11 legislature proceeded forward and adopted plans for both  
12 the House and the Senate on March 29 of 2022, and those are  
13 the plans that are before the Court today that are being  
14 challenged.

15 Now, the legislature adopted those plans in March of  
16 2022, but this lawsuit was not filed until December the  
17 20th of 2022, which happened to be less than two weeks away  
18 from when the qualifying period began for statewide  
19 elections. Statewide elections are going to be in 2023,  
20 and so the qualifying period started then, elections were  
21 going to be later. This lawsuit was filed along those  
22 lines. So the lawsuit that was filed on December 20th,  
23 that's us here today, and that's what -- that's what we're  
24 being called upon to address.

25 So with regard to the claims that the plaintiffs are

1 making, they are making claims under Section 2 of the  
2 Voting Rights Act and then the Fourteenth Amendment, Equal  
3 Protection Clause of the United States Constitution. As  
4 you've heard with regard to the Senate map under Section 2,  
5 they are challenging two Senate Districts. I'm sorry, with  
6 regard to Section 2, they're challenging four of the 52  
7 Senate Districts. And then they are challenging three of  
8 the 122 districts in the House.

9 As to their equal protection claims, they challenge  
10 two of the 52 seats in the Senate, and then they challenge  
11 of the three of the 122 seats in the House.

12 Now, those aren't many seats in comparison to the  
13 total number of seats in both chambers. But as this Court  
14 can appreciate, any change to one district has a ripple  
15 effect that affects many, many, many more districts than  
16 just the ones that are at challenge. And so given the  
17 districts that are under challenge, the important fact here  
18 is that of course the plaintiffs bear the burden of proof.  
19 The plaintiffs have the burden of proof to prove both the  
20 Section 2 claims and the equal protection claims.

21 The burden of proof with regard to the Section 2  
22 claims follows the familiar *Gingles* analysis that the Court  
23 handed down years ago in the *Thornburg versus Gingles* case,  
24 and essentially there are three preconditions under *Gingles*  
25 that need to be met. Sometimes those are referred to as

1 prongs, prongs 1, 2, and 3.

2 And then there's the totality of the circumstances  
3 analysis, and I'll talk about the proof with regard to  
4 those in just a minute.

5 The other burden of proof that the plaintiffs have  
6 is the burden of proof with regard to their Fourteenth  
7 Amendment claims, and their burden of proof is a demanding  
8 burden of proof there. It is a burden to show that the  
9 legislature subordinated traditional redistricting  
10 principles to racial considerations. We believe the proof  
11 is going to be insufficient to meet that prong -- to meet  
12 that particular burden.

13 But let's talk about the burden. Let's talk about  
14 the proof that we anticipate seeing with regard to prongs  
15 1, 2, and 3 of *Gingles*. With regard to prong 1, prong 1  
16 says that there must be a sufficiently large minority  
17 population, which means 50 percent plus under Supreme Court  
18 law, in a reasonably compact geographic area, to constitute  
19 a majority in a single-member district.

20 Now, the plaintiffs, as you've heard, will offer  
21 Mr. William Cooper, a demographer. He has drawn  
22 illustrative plans for both the House and the Senate. And  
23 as you've heard, he has added four majority-Black districts  
24 in the Senate, and he's added three in the House. We  
25 believe the evidence is going to show that Mr. Cooper

1 arbitrarily selected planning and development district  
2 boundaries. Planning and development district boundaries  
3 are questionable in terms of using for redistricting, but  
4 nonetheless he chose those. And the focus when he chose  
5 those was concentrated on race in these particular areas.

6 He didn't use all 10 Planning and Development  
7 Districts. He only used five of the 10. And of those  
8 five, we believe the proof is going to show that the focus  
9 was one more so on race than any other factor.

10 We will anticipate offering the testimony of Dr. Tom  
11 Brunell. Dr. Brunell is a political scientist at the  
12 University of Texas at Dallas, and he has conducted -- he  
13 just does a comparison. He does a comparison of the  
14 traditional redistricting principles that Mr. Cooper will  
15 say he relied on and those that the legislature had. And  
16 when that comparison is conducted, we believe the proof is  
17 going to show that Mr. Cooper's plans really fair no better  
18 with regard to applying traditional redistricting  
19 principles than the state's did.

20 And we believe this is particularly important in  
21 light of what the proof will show, that Mr. Cooper had the  
22 luxury of operating in a controlled environment. He was  
23 able to pick and choose the boundaries and the things that  
24 he was going to do, and that was a far different exercise  
25 than the legislature faced when it faced all the political



1     considerations it faced throughout that process and the  
2     things that it has to consider with regard to complying  
3     with all the legal principles as well.

4             We believe the evidence then is going to be  
5     insufficient, the plaintiffs' evidence, with regard to  
6     prong 1 of *Gingles* will be insufficient to meet that prong,  
7     and therefore that will fail.

8             The second prong of *Gingles* is the prong that deals  
9     with cohesiveness of the racial group, of the minority  
10    racial group. And with regard to that second prong,  
11    counsel has indicated they will offer the testimony of  
12    Dr. Lisa Handley, a political scientist, and they've  
13    indicated what they anticipate she will testify about.

14            We plan to offer the testimony of Dr. John Alford.  
15    Dr. Alford is a political scientist at Rice University and  
16    has extensive experience with regard to analyzing prongs 2  
17    and 3 of *Gingles*. And we believe that his testimony is  
18    going to show that he takes the same data that Dr. Handley  
19    takes, and he uses the same methodology that Dr. Handley  
20    uses, and his conclusion is that that data, using her  
21    methodology, actually indicates that the polarization that  
22    is taking place today in Mississippi is partisan  
23    polarization. Polarization based on party and not race.  
24    That's very different than the requirement for racial  
25    polarization and the political cohesiveness in prong 2.

1 And we believe that Dr. Alford's testimony is going to set  
2 forth that evidence, and we believe, then, that the  
3 plaintiffs' proof with regard to Section 2 will be  
4 insufficient.

5 Prong 3. Prong 3 is the majority group voting as a  
6 block to usually defeat the minority preferred candidate.  
7 Prongs 2 and 3 are sometimes read together, because they  
8 are related in some form or fashion. The proof for prongs  
9 2 and 3 will consist of Dr. Handley and Dr. Alford again,  
10 because those are closely related and closely aligned.  
11 Again, we believe that when the comparison is made and the  
12 weight of the evidence is measured with regard to what  
13 Dr. Handley will testify about and then what Dr. Alford  
14 will testify about, we believe that it will demonstrate  
15 that the plaintiffs' proof is insufficient to satisfy  
16 prongs 2 and 3 of *Gingles*.

17 Now, significantly with regard to the plaintiffs'  
18 burden of proof, they must prove all three preconditions,  
19 all three prongs first before we ever get to the totality  
20 of circumstances analysis. And so while we believe here  
21 that their proof will be insufficient to meet those first  
22 three prongs, nonetheless when you look at the totality of  
23 circumstances analysis in this case, we believe that the  
24 plaintiffs' proof will be insufficient to satisfy their  
25 burden to meet the totality of circumstances analysis.

1           What are the totality of circumstances? It consists  
2 of what's known in many instances as "the Senate factors."  
3 These were factors that the United States Senate set forth  
4 when it reenacted the Voting Rights Act in 1982 as factors  
5 that were suggestive of consideration as part of an  
6 intensely local analysis of the particular jurisdiction at  
7 issue to determine really what's going on on the ground,  
8 what's taking place there not in theory, but in reality.  
9 And so there are like nine of those Senate factors, and  
10 counsel for the plaintiff has gone through some of those.  
11 I think he maybe went through all of them. But this Court  
12 and others have held that there are a few of those factors  
13 that are really more important than others.

14           And two of the most important factors are the ones  
15 that -- the Senate factor to the extent to which the  
16 minority group members have been elected to public office  
17 in the jurisdiction, and then the extent to which voting in  
18 the state is racially polarized; and that's Senate factor  
19 2, the extent of polarization. And that's going to be a  
20 significant point of disagreement that we're going to have  
21 with the plaintiffs that will be borne out by the proof.

22           As I mentioned to you earlier, we anticipate that we  
23 will provide the proof of Dr. John Alford, who has analyzed  
24 the data, the methodology Dr. Handley used, and he finds  
25 and his conclusions will be that what's driving voter

1 behavior in Mississippi today is party and not race.

2 As to the other Senate factors, the plaintiffs have  
3 indicated they're going to offer testimony, extensive  
4 testimony probably, about Mississippi history. And there  
5 are going to be parts of that Mississippi history -- and  
6 none of us can deny our history. We can't take that away.  
7 But we can -- we can ask the question of what are things  
8 like today in spite of the history and the things that may  
9 have taken place that none of us are proud of, what's going  
10 on today? What's the relevant questions to be asking in  
11 terms of where are we?

12 What does the evidence show with regard to  
13 polarization? Does the evidence indicate that we've now  
14 matured politically, and that we've actually come to a  
15 point where voting is being driven by partisan  
16 consideration and not racial consideration?

17 And so what does the evidence show with regard to  
18 access to voting and political participation by our  
19 minority citizens as well as others?

20 We believe that the evidence in this case will  
21 demonstrate that voter participation in terms of  
22 registration and turnout really has reached the point of  
23 almost parity between Black citizens and white citizens.  
24 We believe that the testimony is going to demonstrate that  
25 it's a new day when it comes to that in Mississippi.

1           The plaintiffs have indicated they're going to offer  
2     the testimony of Dr. Byron D'Orey (sic) who conducted a few  
3     tests on a single election. The election in 2020. And  
4     based on that, we believe the proof is going to show that,  
5     of course, he'll offer an opinion about turnout which we  
6     will -- we will beg to differ when the time for the proof  
7     comes.

8           In addition to Dr. Alford and Dr. Brunell, whose  
9     testimony I've also mentioned, we plan to off the testimony  
10    of Mr. Kyle Kirkpatrick. He's an assistant secretary of  
11    state in charge of the elections division, and we  
12    anticipate that he will be able to testify about efforts  
13    that the state of Mississippi makes with regard to voter  
14    registration, voter turnout, and providing access to all  
15    citizens to fair and free elections and political  
16    participation.

17          So we believe that overall when the Court looks at  
18    the body of evidence with regard to the totality of the  
19    circumstances analysis, it will show several things. The  
20    proof will show, number one, voter polarization is being  
21    driven in Mississippi now by party and not race.

22          Black citizens are getting elected to public office  
23    in Mississippi, in the Senate and the House, in significant  
24    numbers, and access to political participation and voting  
25    is open to all, and the days of voter suppression and

1 intimidation are thankfully behind us and that we are --  
2 we've made a lot of progress in Mississippi.

3         Along those lines, we believe the plaintiffs will be  
4 unable to provide sufficient evidence to meet their burden  
5 of proof, both under the Section 2 burden of proof and the  
6 burden of proof for the Equal Protection Clause. Along  
7 those lines, plaintiffs mentioned, plaintiffs' counsel  
8 mentioned, that they will offer the proof of Dr. Jordan  
9 Ragusa to establish their claim for a violation of the  
10 Equal Protection Clause. While the plaintiffs will offer  
11 Dr. Ragusa to opine on the methodology that he employs to  
12 arrive at that conclusion, we will offer the testimony of  
13 Dr. Tom Brunell, as I mentioned earlier. And Dr. Brunell  
14 has looked at Dr. Ragusa's model, and we believe his  
15 testimony will provide evidence that Dr. Ragusa's model is  
16 flawed and not a reliable model to rely upon in  
17 establishing that the plaintiffs meet their burden of proof  
18 on the Equal Protection claim.

19         So in conclusion, we believe that when it's all said  
20 and done, when the evidence is all in, that the plaintiffs  
21 will have failed to meet their burden of proof with regard  
22 to their Section 2 claims and with regard to their Equal  
23 Protection, Fourteenth Amendment claims.

24         Thank you, Your Honor.

25         MR. WALLACE: May it please the Court, I'm Mike

1 Wallace, and this is as high as my tech gets. I am  
2 representing the Republican Party. The Republican Party is  
3 here because we are obliged to enforce the election laws  
4 established by the legislature unless and until you order  
5 us to do something else. And I'm going to explain briefly  
6 why I don't think you should order us to do anything else.

7 On page 16 of the pretrial order that you have just  
8 entered, the plaintiffs clearly state that they do not  
9 allege any invidiously racially discriminatory intent in  
10 this case. Because the Equal Protection Clause requires a  
11 showing of invidious racially discriminatory intent, they  
12 cannot carry the burden, because they haven't alleged what  
13 they needed to do.

14 So I'm going to talk about Section 2, which is the  
15 only thing that is left of their lawsuit. The legislature  
16 is presumed to have acted in good faith, and since they are  
17 not alleging invidious intent on the legislature, that good  
18 faith is unchallenged. What they have to prove is that a  
19 supremely innocent legislature, acting in unchallenged good  
20 faith, somehow ran afoul of the words on these posters.  
21 And I should say before we go any further, the Court has  
22 been very attentive this morning. I am used to answering  
23 questions from judges, and if there's anything you want me  
24 to talk about before I sit down, please feel free to ask.  
25 But this is what I'm here to talk about, is what the

1 language actually says. So in order to show the  
2 legislature has somehow run afoul of the statute, we have  
3 to look at what the statute says.

4 First what is it talking about? It's talking about  
5 qualifications are prerequisites to voting and a few other  
6 words. Justice Harlan and Justice Stevens have explained  
7 why all those words are terms of art under the Voting  
8 Rights Act. There are justices on the Supreme Court who  
9 still believe that. But the majority say, no, they are  
10 very broad words, they cover everything you could possibly  
11 imagine that affects an elections, and that's the law  
12 you'll be applying here today.

13 What -- the qualification they're challenging is  
14 district lines. District lines in a single member  
15 legislative district. And that's something you can  
16 challenge, and that's what they've done. Who are they  
17 talking about in the statute? It says the state. The  
18 state in this case because it's legislative redistricting  
19 is the Mississippi Legislature. They have sole authority  
20 over redistricting. The governor doesn't get a veto. They  
21 do it. So you're looking at what the legislature did with  
22 regard to these district lines.

23 They have challenged very few district lines under  
24 Section 2. You've been told four in the Senate, three in  
25 the House. That means out of 174 districts, 167 the



1 legislature did just fine. The judges who sat on  
2 legislative cases in the '50s and '60s would be delighted  
3 by that record. So we have a few, a handful of potential  
4 problems that they're attacking. What is it they say the  
5 state Legislature has done with these lines? Well, the  
6 statute talks about denying and abridging the right to  
7 vote. Well, nobody's had their right to vote denied. We  
8 have plaintiffs here. They vote all the time. They  
9 haven't had their vote denied. What does it mean to be  
10 abridged? Well, that's a good question. And that's a  
11 question that members of Congress were asking in 1982.  
12 They wanted to say that if we are getting away from the  
13 constitutional discriminatory intent standard that the  
14 Supreme Court says is imposed by the Fifteenth Amendment,  
15 what are we doing instead? And that language that you  
16 looked at was not very helpful. So Senator Dole and  
17 Senator Kennedy came up with some different language, and  
18 President Reagan agreed to sign it. And that language is  
19 right here in subsection (b), this is how you prove that  
20 somebody's vote has been abridged under subsection 2(a).

21 And Senator Dole wrote about his understanding of  
22 the compromise. President Reagan in his signing statement  
23 wrote about his understanding of the compromise. Senator  
24 Kennedy never did any such thing. But it really doesn't  
25 matter, because you don't care what they meant. You care

1     what they say. As Oliver Wendell Holmes told us over a  
2     century ago, we determine not what the legislators meant  
3     but what the statute means. And so you need to pull out  
4     your dictionaries, and let's look at what the statute  
5     means.

6             What does it say you have to prove? You have to  
7     prove that political processes are not equally open to a  
8     protected class. Political processes is very broad, and  
9     these district lines are part of the political processes.  
10    Who is the protected class? The protected class in this  
11    case is Black voters in Mississippi. It can be other  
12    classes in other places, but that's what we're talking  
13    about here.

14            So plaintiffs have to prove that the political  
15    processes in Mississippi are more open to everybody else  
16    than they are to them. Well, how do you show that?  
17    Section 2(b) says you have to prove two things, not one or  
18    the other. The word "and" is in there. So you have to  
19    prove that Blacks have less opportunity to participate and  
20    less opportunity to elect representatives of their choice.

21            Now, we've already talked a little bit about turnout  
22    this morning. Twenty-five years ago Judge Lee determined  
23    that Black and white turnout had reached parity in  
24    Mississippi. The Fifth Circuit affirmed his judgment. The  
25    Fifth Circuit agreed with his reasoning. You can look at

1     their opinion, and they say we have parity in Mississippi.

2             Fifteen years after that, the Supreme Court in  
3     *Shelby County* looked at the census data, and the Supreme  
4     Court said Black participation has surpassed white  
5     participation in Mississippi. And they acted accordingly  
6     when they negated the continuing effect of Section 4.

7             So to carry their burden of lack of participation,  
8     they've got to come in here and show that all these courts  
9     have been wrong for all these years. How do they intend to  
10    do it? They have one expert who has examined one election,  
11    a federal election in 2020, when there were no legislators  
12    on the ballot. This is a case about legislative elections.  
13    They haven't looked at turnout in legislative elections.  
14    One federal election 2020 that has already been observed,  
15    2020 was a pretty unusual federal election for a lot of  
16    reasons.

17            So we think when you hear all the experts go back  
18    and forth, you'll conclude they haven't proved lower  
19    participation. But even if you believe their numbers from  
20    2020, they're not all the way home on that point. It's not  
21    just you have lower participation, it's you have less  
22    opportunity for participation. If you have the opportunity  
23    to vote and you choose not to do it, then there's no  
24    violation of the Voting Rights Act. So they've got to show  
25    that somehow Black folks not only are under-participating,

1 but they don't have the opportunity to participate.

2 If you can solve that half of the two-prong puzzle  
3 down there, then you have to look at whether or not they  
4 have an equal opportunity to elect. And we're talking  
5 about state legislators, so you need to look at state  
6 legislative elections. And they have an expert who's done  
7 that. She looked at 19 out of 174 district elections in  
8 2019, and that's their evidence that the 2023 lines deny an  
9 opportunity to elect.

10 Now, if you try to challenge a statute before it's  
11 enforced, you can look at old elections to do it. You can  
12 say this is the best evidence we've got; this is how people  
13 participated. We know the lines changed. But we break  
14 them down by precincts, and we think if you look under the  
15 new lines, this is how people will perform. That's not  
16 this case. Elections have been held under this line in  
17 2023. We don't have to reconstitute anything. We know  
18 what happened in 174 legislative districts in 2023. And  
19 plaintiffs will not present a single word of evidence about  
20 that. And how in the world they think they can carry their  
21 burden of showing that 2023 lines deprive people of equal  
22 opportunity when they have ignored every single election is  
23 more than I can imagine, but I'm sure they're going to tell  
24 you.

25 Now, if they prove those things, you're not done

1 yet. You have to go back to subsection (a), and subsection  
2 (a) says denial or abridged on account of race or color.  
3 If they can prove everything in Section 2(b), they still  
4 have to come back and prove that the reason it happened was  
5 race or color. And that's what Mr. Cardin was talking  
6 about.

7 Do we have a problem with party? Do we have a  
8 problem with race? It is not illegal for Blacks to lose  
9 elections because they're Democrats. That's been the law  
10 since *Whitcomb v. Chavis* back in the '70s, and it's not  
11 been challenged by anybody. It may be illegal for  
12 Democrats to lose because they're Black. That's what  
13 they've got to prove, is that race is driving results that  
14 they don't like in this handful of seven districts. There  
15 will be testimony on that. But I don't think you're going  
16 to need to resolve it.

17 Now, why have I belabored the obvious this morning?  
18 Of course, we're here to interpret a statute. Everybody  
19 knows that. I do this because as their opening has  
20 established, they're going to offer a week's worth of  
21 evidence that has no relevance whatsoever to any of these  
22 words. They've told you they're going to offer evidence  
23 about the Senate factors. This is the Senate report. You  
24 know what a Senate report is, and you know it's not the  
25 statutes at large. This is not the law. There are Supreme

1 Court cases and Fifth Circuit cases that have said over the  
2 years that the Senate factors may be worth consideration  
3 when you're looking at the totality of the circumstances.

4 And, sure, you can look at all of that stuff to see  
5 if the current circumstances have any effect on modern  
6 times and modern elections. But the circumstances change.  
7 And the circumstances have changed tremendously since 1982.  
8 The Supreme Court in *Shelby County* said you can't look at  
9 circumstances in 1965 and continue to enforce federal law  
10 on the basis of circumstances that no longer exist.

11 Fifth Circuit has recently said in the *Harness* case,  
12 it doesn't matter what the circumstances were in 1890, you  
13 have to look at what Mississippi has done with regard to  
14 felony disenfranchisement since then. You have to base  
15 your decision on modern circumstances, not old  
16 circumstances. And circumstances have certainly changed.  
17 And these plaintiffs, I think, have acknowledged that  
18 circumstances have changed.

19 Way back 50 or 60 years ago, Frank Parker cooked up  
20 the 65 percent rule, and that's been applied by this Court  
21 and by other courts. And in those days, the rule was you  
22 needed to have a 65 percent Black district in order for  
23 Black candidates to win. Those circumstances have changed.  
24 It made a difference. Registration has changed. Turnout  
25 has changed.

1           Two years ago when we litigated the congressional  
2   redistricting plan, the NAACP came into court and said  
3   Congressman Thompson's 62 percent Black district was too  
4   Black. So the numbers have changed. Mr. Cooper is going  
5   to give you a bunch of maps on the stand. I don't think  
6   any of them get anywhere close to 65 percent.  
7   Circumstances change, and the mere fact that something  
8   seemed important to the Senate judiciary staff 42 years ago  
9   is not enough to make it a relevant circumstance today. So  
10   this is what you will have to do. You'll have to evaluate  
11   the evidence. You're going to have to consider --

12           JUDGE JORDAN: I am going to ask a question. Are  
13   you saying we don't look at the totality of the  
14   circumstance as the Supreme Court laid out?

15           MR. WALLACE: You look at the totality of the  
16   circumstances, but you look at the totality of the  
17   circumstances in light of current conditions, which is what  
18   the Supreme Court did in *Shelby County*.

19           JUDGE JORDAN: Right. I understand that. But you  
20   seem to be saying that we shouldn't look at the Senate  
21   factors because they came from the Senate. But the Supreme  
22   Court incorporated that into the analysis, did it?

23           MR. WALLACE: I think what the Supreme Court has  
24   said is that the Senate factors weigh out things you may  
25   consider in the course of considering the totality of the

1 circumstances, but you do not treat them like holy writ.  
2 They are simply what the judiciary committee staff thought  
3 was relevant in 1982, and you've got to apply it -- and I'm  
4 going to tell you right now how it's going to come up in  
5 this case. They're going to put somebody on the stand, and  
6 they're going to ask him about the 1875 Clinton Massacre.  
7 And I'm going to object. And they're going to say Senate  
8 Factors. And I'm going to say, so what?

9 Unless there's evidence that the descendants of the  
10 Redeemers are roaming around Hinds County looking to  
11 bushwhack Black voters, it doesn't mean anything. It's not  
12 a circumstance that affects the issue in the case. Do  
13 these district lines deprive anybody of the right to vote  
14 or abridge their right to vote? That's what we'll be  
15 arguing about this week.

16 I think you will find it very difficult to come up  
17 with any evidence in this case that show these lines deny  
18 anybody an equal opportunity to participate or deny anybody  
19 an equal opportunity to elect. And for those reasons, I  
20 think you're going to dismiss this complaint with  
21 prejudice. Thank the Court.

22 JUDGE JORDAN: All right. Thank you. Call your  
23 first witness.

24 MR. SAVITZKY: Thank you, Your Honor. Before I call  
25 the first witness, a couple of preliminary matters with the



1 Court's indulgence. The stipulations that -- you can take  
2 the slides down for now. The stipulations included with  
3 the joint pretrial order, we would move their admission  
4 into the trial record at this time. And I have one  
5 scrivener's error that we notices that I can note in the  
6 record as well. I'm happy to hand up a copy.

7 JUDGE JORDAN: All right. Please do. I assume  
8 there's no objection to the stipulations.

9 MR. CARDIN: No objection, Your Honor.

10 MR. WALLACE: No.

11 MR. SAVITZKY: And I'll note the scrivener's error  
12 for the record is in paragraph 118, the last paragraph. It  
13 should say Shanda Yates represents House District 64.

14 May I approach?

15 JUDGE JORDAN: You may. Do we want to I guess mark  
16 that as JTX055?

17 MR. SAVITZKY: Yes, Your Honor. That would be the  
18 next in the joint exhibit series.

19 JUDGE JORDAN: Okay. All right. It's admitted.

20 (Joint Trial Exhibit 55 entered.)

21 MR. SAVITZKY: And, Your Honor, while we're on the  
22 subject of the admission of exhibits, we would move at this  
23 time for the admission of all joint exhibits, 1 through 54.

24 JUDGE JORDAN: I assume no objection to that?

25 MR. CARDIN: No objection, Your Honor.

1 JUDGE JORDAN: Joint exhibits are admitted.

2 (Joint Trial Exhibits 1 through 54 entered.)

3 MR. SAVITZKY: Thank you, Your Honor. And lastly on  
4 this point, we would also, to streamline the proceedings,  
5 ask the Court to admit at this time all of the exhibits  
6 from plaintiffs' and defendants' exhibit list to which no  
7 objection was lodged.

8 JUDGE JORDAN: All right. Any objection to that?

9 MR. CARDIN: No objection, Your Honor.

10 MR. SAVITZKY: And if it please the Court, I'll read  
11 the particular exhibit numbers in the record at this time.

12 JUDGE JORDAN: That would be fine.

13 MR. SAVITZKY: For plaintiffs' exhibit list, we have  
14 Exhibit 1, 2, 4, 5, 6, 8, 9, 20, 21, 22, 23, 24, 25, 53,  
15 54, 88, 89, 90, 91, 92, 93, 94, 95, 96, 99, 101, 102, 105,  
16 109, 114, 115, 116, 117, 118, 119, 127; and that is it from  
17 the plaintiffs' list.

18 I'm happy to read the exhibits from defendants' list  
19 of which no objection has been lodged into the record at  
20 this time.

21 JUDGE JORDAN: Just to break it up, I won't repeat  
22 all the numbers, but the unobjected-to exhibits on the  
23 plaintiffs' list are admitted. Mr. Cardin?

24 MR. CARDIN: No objection, Your Honor.

25 JUDGE JORDAN: You were about to say something?

1 He's about to read your exhibits.

2 MR. CARDIN: I'm fine with him reading our exhibits  
3 into the record.

4 JUDGE JORDAN: Very good.

5 MR. SAVITZKY: I figured it would be prudent to seek  
6 defense counsel's permission to do that. So defendants'  
7 Exhibits 1, 2, 3, 4, 12, 13, 16, 21, 22, 23, 24, 25, 50.  
8 And I believe that's it unless --

9 MR. CARDIN: That's accurate, that's it.

10 JUDGE JORDAN: All right. Those exhibits are  
11 admitted as well.

12 MR. SAVITZKY: And thank you, Your Honor. And one  
13 other housekeeping point if I may? The Court had mentioned  
14 the deposition designations. We have emailed those along,  
15 and I think it makes sense for me to re-raise those after  
16 the Court's had a chance to review, if that makes sense for  
17 the Court.

18 JUDGE JORDAN: I'm sorry to re-what?

19 MR. SAVITZKY: We have sent the deposition  
20 designations in a PDF, and so I can re-raise that in the  
21 morning if that makes sense.

22 JUDGE JORDAN: That's fine. We'll need an  
23 opportunity to look at the objections. Those were both  
24 defense depositions; is that right?

25 MR. SAVITZKY: Plaintiffs took both of those

1 depositions.

2 JUDGE JORDAN: Both of them. You were going to call  
3 them, but they were their witnesses; is that not right?

4 MR. SAVITZKY: One of them is one of their  
5 witnesses, that's correct.

6 JUDGE JORDAN: Okay. All right. Well, obviously  
7 we'll need some time to look at the objections.

8 MR. SAVITZKY: Understood, Your Honor. And at this  
9 time, the plaintiffs would call William Cooper to the  
10 stand.

11 JUDGE JORDAN: All right.

12 **WILLIAM COOPER,**

13 **having been first duly sworn, was examined and**  
14 **testified as follows...**

15 **DIRECT EXAMINATION**

16 **BY MR. SAVITZKY:**

17 Q. Good morning, Mr. Cooper.

18 A. Good morning.

19 Q. Now, there should be a large binder in front of you,  
20 and I don't see it there. So if I may approach the witness  
21 and grab the trial binder?

22 JUDGE JORDAN: You may.

23 MR. SAVITZKY: Thank you very much.

24 JUDGE SOUTHWICK: Is this the same binder you  
25 provided to us, volume one?

1 MR. SAVITZKY: Correct. Volume one containing  
2 plaintiffs' Exhibit 1, which has just been admitted into  
3 evidence.

4 JUDGE SOUTHWICK: Have you read all of this?

5 MR. SAVITZKY: Your Honor, unfortunately I have.

6 And I'd point out that large binder to you,  
7 Mr. Cooper. It contains what's been marked as plaintiffs'  
8 Exhibit 1. It should be, and we'll confirm it in a second,  
9 your August 28, 2023, declaration and the exhibits thereto,  
10 which have been admitted into evidence.

11 And, Your Honors, I also have a copy of a PowerPoint  
12 presentation that we're going to do with Mr. Cooper. I'm  
13 happy to hand out copies of those as well if that would be  
14 helpful?

15 JUDGE JORDAN: Sure.

16 BY MR. SAVITZKY:

17 Q. How are you this morning, Mr. Cooper?

18 A. Fine, thank you.

19 Q. Mr. Cooper, were you retained as an expert by the  
20 plaintiffs in this case?

21 A. I was retained by the plaintiffs.

22 Q. And you prepared a report in this case?

23 A. I have.

24 Q. And is that report the document marked as  
25 plaintiffs' 1 that you have in front of you?

1 A. I believe so.

2 Q. Now, have you noticed any errors or typos in your  
3 report?

4 A. I've noticed a couple of typos here and there. I  
5 don't think they're really material, though.

6 Q. Any of that affect the substance of your analysis or  
7 conclusions?

8 A. No.

9 Q. And now turning to Exhibit A of your report, this is  
10 on PTX01 at page 81, is that a summary of your work  
11 history?

12 A. Yes, as of August of 2023.

13 Q. Now, let's talk about that. Starting at a high  
14 level, Mr. Cooper, how would you describe your job?

15 A. Well, I provide consulting services to nonprofit  
16 organizations, occasionally to local governments, focusing  
17 on demographics, and applying mapping technology to  
18 demographics. I do it all over the country. I'm from  
19 Virginia, but most of my work has been in the southeast and  
20 somewhat in the Rocky Mountain West, so-called Indian  
21 Country.

22 Q. How much of that work involves the drawing of  
23 electoral maps?

24 A. Close to 95 percent of the time, I think.

25 Q. Mr. Cooper, what types of data do you typically use

1    when you conduct demographic analysis and draw electoral  
2    maps?

3    A.       I overwhelmingly rely on census data from the U.S.  
4    Census Bureau. But I also obtain data sometimes from state  
5    agencies or from local agencies, so those would be my key  
6    sources.

7    Q.       And, Mr. Cooper, you mentioned census data. The  
8    U.S. census PL94171 file, which is in evidence already as  
9    joint Exhibit 1, is that a dataset that you work with when  
10   you conduct your demographic analysis and draw maps?

11   A.       Yes. For redistricting purposes, I routinely use  
12   the PL94171 file, both present day and going back in time.

13   Q.       Do you use any particular type of software or  
14   platform to draw electoral maps?

15   A.       I use a mapping software program called Maptitude  
16   for redistricting, that is relied upon by many state  
17   governments around the country to develop their  
18   redistricting plans as well as local jurisdictions. I've  
19   been using Maptitude for redistricting since it first came  
20   out in early 2001, I think.

21   Q.       And, overall, how long have you been doing this  
22   redistricting and map-drawing work?

23   A.       I've been doing it for about 35 years. Started  
24   sometime in 1987, and I've continued it. And there hasn't  
25   been a year where I haven't done redistricting plans and

1 numerous redistricting plans every year.

2 Q. Mr. Cooper, when you started doing this work in 1987  
3 or so, were you using a computer program at that time?

4 A. I was, but not to visualize it on a computer in  
5 terms of a map. I was working off of paper maps and then  
6 running the calculations through a macro-driven Lotus 1-2-3  
7 spreadsheet. If you folks remember those maybe. But that  
8 was the fast way to get calculations on the total  
9 populations in the districts I was drawing.

10 Q. Now, Mr. Cooper, have you testified in federal court  
11 as a redistricting expert in any recent cases?

12 A. Yes. Since 2021 when the census data was released,  
13 I think I've testified in about ten redistricting cases.  
14 And in a couple of instances on multiple occasions  
15 specifically in Georgia and some other place maybe. That  
16 may be it for multiple occasions.

17 Q. You testified in Georgia on multiple occasions.  
18 What are some of the other federal cases you've testified  
19 in recently?

20 A. I testified in -- the first one out of the gate was  
21 *Alabama v. Milligan* or *Milligan v. Alabama*. I'm not sure  
22 how that works. But after that, then I developed three  
23 different plans and testified in a lawsuit in Baltimore  
24 County, Maryland. Also, I testified in a congressional  
25 lawsuit in Georgia and a legislative lawsuit in Georgia.



1 All of those cases took place in 2021.

2 In 2022, I testified in a congressional case  
3 involving Louisiana.

4 In 2023. I've revisited Georgia again, in December  
5 of 2023. But earlier in the year, I testified in the  
6 *Galveston County, Texas* case. I testified in -- recently,  
7 not long ago, in the Louisiana legislative case. And I may  
8 have left out something, but those are the -- probably the  
9 big ones.

10 Q. And, Mr. Cooper, overall, over the course of your  
11 time doing this work, how many times have you testified as  
12 an expert witness in a federal court redistricting case?

13 A. I think about 55 times.

14 Q. And how many of those are Section 2 cases?

15 A. At least 95 percent.

16 Q. And did you draw illustrative redistricting maps in  
17 each of those cases?

18 A. I believe so. I don't recall any that I didn't.

19 Q. And you mentioned that you were a testifying expert  
20 in the *Allen versus Milligan* case. Is that the same case  
21 that went to the United States Supreme Court last year?

22 A. Yes.

23 Q. Now, Mr. Cooper, has a court ever ordered a change  
24 to a state or local redistricting plan in a case where you  
25 testified as an expert?

1 A. Yes.

2 Q. About how many times roughly would you say that's  
3 happened?

4 A. At the state level, I recall the court ordered the  
5 plan I developed, the state legislature plan, for both  
6 House and Senate in South Dakota in place as presented at  
7 trial as the illustrative *Gingles* 1 map. There have been  
8 other situations at the local level where the courts have  
9 ordered my plan in place.

10 Q. And what you're saying is a court has directly  
11 adopted you illustrative plan into --

12 A. Into a working election plan.

13 Q. Now, Mr. Cooper, when you draw illustrative  
14 districting plans in a Section 2 case, are there particular  
15 principles or methods you apply?

16 A. Yes. I apply what are known as traditional  
17 redistricting principles.

18 Q. And, Mr. Cooper, we'll talk about those more. Do  
19 you ever draw electoral districting maps outside the  
20 litigation context?

21 A. Yes. I've worked for local governments, state  
22 governments, and oftentimes for local citizens groups and  
23 state and national civil rights organizations.

24 Q. All in all, about how many different jurisdictions  
25 have you drawn electoral maps for over the years?

1       A.       If you go all the way back to 1987, I would  
2       calculate somewhere in the range of 750 for the separate  
3       governing bodies. I would, of course, stress many of those  
4       were the one-and-done type, where someone asked me to  
5       produce a plan, and that was as far as it went.

6               But many of them lasted for years and years and  
7       years. The Montana case I was involved, involving the  
8       Salish and Kootenai reservation and the Blackfeet  
9       reservation in western Montana lasted for 11 years. And  
10      the Indigenous trials tend to go for a long time.

11             The most recent case I did in San Juan County, Utah  
12      started in 2011 and finally finished in 2018, so was eight  
13      years. That's the longest running currently in recent  
14      times.

15      Q.       And, Mr. Cooper, turning your attention to  
16      Mississippi, have you ever worked in Mississippi before?

17      A.       Yes, I have. I have testified in several cases in  
18      Mississippi going back to the early '90s.

19      Q.       And let's just put the next slide on the screen.  
20      And I'm putting up a list of some of the Mississippi cases  
21      that you indicate you testified in from Exhibit A in your  
22      report. Does that list look right to you?

23      A.       Almost. The case captioned *Gunn v. Chickasaw*  
24      County, the caption may be correct in terms of the start of  
25      the case and the initial federal court ruling. But I

1 testified when that case was on remand, and I think that  
2 was sometime in the mid 1990s, '94, '95.

3 Q. So the testimony you offered was sometime after  
4 1989?

5 A. Right. The case was going back and forth at the  
6 appellate level for several years.

7 Q. These are all federal court cases where you -- did  
8 you offer expert testimonies in these cases?

9 A. Yes.

10 Q. And, Mr. Cooper, did any of these cases involve  
11 redistricting the Mississippi State Legislature?

12 A. No. Well, actually, the *Thomas v. Reeves*, of  
13 course, the state Senate in 2019. That was one single  
14 district, District 22, involving Warren and Yazoo County,  
15 and a couple of other districts and counties.

16 Q. And you drew a state illustrative plan in that case?

17 A. I did.

18 Q. And looking at the *City of Hattiesburg* case there,  
19 did you draw illustrative plans in the City of Hattiesburg  
20 as part of that case?

21 A. Yes, I did.

22 Q. And looking at the *City of Tupelo* case there, you  
23 drew illustrative plans for the City of Tupelo as part of  
24 that case?

25 A. Yes, I did.

1 Q. And you drew illustrative plans for Newton County as  
2 part of the *Newton County* case that's listed there?

3 A. Yes, I did.

4 Q. And you drew illustrative plans for the City of  
5 Okolona, which is in Chickasaw County in the *City of*  
6 *Okolona* case?

7 A. Yes.

8 Q. And were you qualified as an expert mapper in all  
9 those cases?

10 A. I believe so.

11 MR. SAVITZKY: Your Honors, at this time the  
12 plaintiffs would offer Mr. Cooper as an expert in  
13 redistricting, demographics, and census data to the Court  
14 under Rule 702 of the Federal Rules of Evidence.

15 MR. WALLACE: May I be heard? Tommie, do you want  
16 to go first?

17 MR. CARDIN: Mine will be easier. Your Honor, no  
18 objection.

19 MR. WALLACE: Your Honor, I didn't object to his  
20 dropping his report in the record, because I think what he  
21 wants to say is admissible. But I do object to his  
22 qualification as an expert, because I don't think the Court  
23 needs one, and I don't think he is one. *Gingles* says you  
24 need maps. They don't say you need to have them drawn by  
25 an expert. This Court has drawn maps in redistricting

1 litigation. The northern district has drawn maps in  
2 redistricting litigation. His maps can come in, and Rule  
3 701 is broad enough that his lay opinions can come in.

4           They've told you in opening what he wants to do is  
5 to say that his maps are better than the legislature's  
6 maps, and he bases it on traditional redistricting  
7 principles. That's not a fact question, and it's not an  
8 expert question. This Court -- it's a legal question for  
9 you to decide what redistricting principles may be applied  
10 in Mississippi. You need to tell that to him. He doesn't  
11 need to tell that to you. I have no objection to his  
12 evidence. I do object to his qualifications for that  
13 reason.

14           JUDGE JORDAN: In what way are his qualifications  
15 insufficient under 702? His specific qualifications. I  
16 understand what you're saying that you don't think they  
17 need an expert, but how is he not qualified as an expert?

18           MR. WALLACE: He's perfectly qualified to draw a  
19 map. I don't see anything that entitles him to give you  
20 legal comparisons of which maps are better than others.  
21 Those are legal questions for the Court, not for the  
22 witness.

23           JUDGE JORDAN: All right. All right. Objection's  
24 overruled. He's qualified as an expert. The objections  
25 really go to the weight of the evidence, and he will be

1     accepted by the Court as an expert in the tendered field.

2             You may proceed.

3             MR. SAVITZKY: Thank you, Your Honor.

4     BY MR. SAVITZKY:

5     Q.       Mr. Cooper, let's start with the big picture. What  
6     were you asked to do in this case?

7     A.       Well, I was asked to take a look at the state of  
8     Mississippi and examine the demographics and determine  
9     whether it might not be possible to draw additional  
10    majority-Black House and Senate Districts under the 2020  
11    census after examining the 2022 House Plan and the 2022  
12    Senate Plan.

13            So I was asked to prepare a report that would  
14    provide background demographics and then an illustrative  
15    plan suggesting different ways to draw additional majority  
16    Black district that would adhere to traditional  
17    redistricting principles.

18    Q.       And, Mr. Cooper, staying with the very big picture  
19    for now, what was your overall high-level conclusion about  
20    whether additional black-majority districts could be drawn  
21    consistent with traditional redistricting principles?

22    A.       It's just glaringly obvious that additional  
23    majority-Black districts can be drawn both by Senate and  
24    House, according to the 2020 census. To me, it's no  
25    contest. My nonlegal opinion, of course; no contest.

1 Q. Understood. And, Mr. Cooper, did you end up  
2 producing illustrative Senate and House plans showing those  
3 additional majority-Black districts that you drew?

4 A. Yes.

5 Q. And, Mr. Cooper, what was your overall high-level  
6 conclusion about the demographics of the state of  
7 Mississippi based on your analysis?

8 A. I looked at the population in the state of  
9 Mississippi in the year 2000, and compared that with the  
10 Census Bureau's report from 2010 and again in 2020, and  
11 could easily see that the Black population has been  
12 climbing over that 20-year period while the white  
13 population has stagnated and even declined.

14 The Black population is up by -- I'm not looking at  
15 the table; I think it's around 88,000 people maybe since  
16 2000, and the white population has fallen by about 82,000.

17 Q. And, Mr. Cooper, as part of your analysis, did you  
18 include the socioeconomic characteristics of the population  
19 of Mississippi?

20 A. Yes. Although I -- I reversed that, I think. The  
21 Black population is 82,000 since 2000, and the white  
22 population has dropped by about 88 or 89,000.

23 What was your question?

24 Q. As part of your demographic analysis, did you also  
25 consider the socioeconomic attributes of the population?



1 A. Yes. I looked at the 2021 American Community Survey  
2 that was released in September 2022. At the time, that was  
3 the most current survey available from the American  
4 Community Survey for statewide comparisons of the Black  
5 population and white population. And it's clear that the  
6 white population benefits and outpaces the Black population  
7 in terms of socioeconomic well-being.

8 Q. And, Mr. Cooper, we've been using the term "majority  
9 Black." What does it mean when you say a district or an  
10 area is majority Black?

11 A. Well, first of all, it would mean that it is at  
12 least 50-percent-plus-one Black voting age. And then the  
13 other side of the coin is how do you define Black? And  
14 according to the *Ashcroft v. Georgia* ruling in 2002 or so,  
15 maybe 2004, by the Supreme Court, the proper measure is any  
16 part Black, which would include all persons who are  
17 single-race Black or some part Black and some part some  
18 other race.

19 Q. That any-part Black definition, is that what you  
20 used for purposes of your analysis and your illustrative  
21 plans?

22 A. Yes.

23 Q. Mr. Cooper, let's talk a little bit about your  
24 demographic analysis. And to start, I'm going to pull up a  
25 graph based on figure 2 on page 11 of your report. PTX001

1 for reference. Mr. Cooper, can you give us a high-level  
2 description of the demographic growth patterns in the state  
3 of Mississippi over the last two decades?

4 A. Well, yes. Again, looking at just voting-age  
5 population as opposed to total population, which I  
6 previously discussed, the Black voting-age population has  
7 been increasing each decade. It's gone from 688,994  
8 persons in 2000 to 823,080 in 2020.

9 The white population, by contrast, has actually  
10 declined over that 20-year period from about 1.32 million  
11 to 1.315 million. It's a slight decline, but it's there.

12 Q. And, Mr. Cooper, I notice there that you're looking  
13 at demographic change from 2000 to 2010 to 2020. Why are  
14 you looking back to 2000 and not just to 2020?

15 A. Well, because I wanted to capture the time period  
16 that would reflect the total number of majority-Black  
17 districts that were set. Today we have 42 House districts  
18 that are majority Black under the 2022 House plan and 15  
19 majority-Black Senate seats. So I went back and looked at  
20 the benchmark plan of 2011, which would have been the 2002  
21 House Plan and 2002 Senate Plan I think based on the 2010  
22 census. And at that time, there were 41 majority-Black  
23 House districts and 14 majority-Black Senate districts. So  
24 we're up one on house in terms of the majority-Black  
25 districts and up on one on Senate in terms of the

1 majority-Black Senate districts.

2           The 15th Senate District has only been around for  
3 six years now. The district that was at issue in the case  
4 I've previously mentioned, *Thomas v. Reeves*, the Senate  
5 seat for an area that is in the south Delta area including  
6 Yazoo County and Warren County and Holmes County and a  
7 couple of other areas that actually was drawn by the state  
8 after the Court ruled in favor of the plaintiffs.

9 Q.       All right. Mr. Cooper, I'm going to pull up a map  
10 that appears on figure 3 of page 14 of your report for  
11 reference. Can you tell us what this map is showing us?

12 A.       This shows the counties of Mississippi. The  
13 coloring indicates the percentage Black, ranging from under  
14 10 percent of course in the northeast borderline  
15 Appalachian area. And then of course heading over into the  
16 Delta and further south, you see there are a number of  
17 districts or counties in the 60 to 80 percent or actually a  
18 couple, even four, that are in the 80 to 90 percent Black  
19 category.

20 Q.       And, Mr. Cooper, why did you look at these planning  
21 districts or PDDs as you were considering the demographics  
22 of the state of Mississippi?

23 A.       Well, it is a way to organize the state in regions.  
24 These are regions that actually matter today. They are  
25 contemporary regions, because each one of these planning

1 districts has a special responsibility to work in the  
2 region that is delineated, and that would involve bringing  
3 together some of the adjacent counties on all sorts of  
4 issues running from agencies of aging to economic  
5 development initiatives. It just -- it just runs the  
6 spectrum of the various programs which these Planning and  
7 Development Districts are involved in. And they have  
8 boards of directors that are made up of local government  
9 officials, that are made up of private business persons,  
10 community leaders, maybe associated with nonprofits, so  
11 they actually do represent a community of interest.

12 And one traditional redistricting principle which I  
13 may have glossed over is community of interest, which is  
14 kind of a fuzzy term. But if anything represents a  
15 community of interest, it would be the Planning and  
16 Development Districts.

17 Q. Okay. Mr. Cooper, we can talk about that. For now,  
18 I want to pull up the next figure. This is figure 6 from  
19 page 18 of your report. Can you tell us what this chart is  
20 showing?

21 A. Well, yes. This is similar to the initial figure we  
22 look at, figure 1, just showing the population change in  
23 those planning districts over the past 20 years. And you  
24 can see there was growth in some of them in terms of total  
25 population, and in others, there was big loss.

1           The planning districts that actually grew  
2 significantly over that 20-year period would be Central,  
3 North Delta, Southern, and to some extent Three Rivers, and  
4 then East Central was more or less stable. Others  
5 experienced significant population loss. That would  
6 include districts like East Central -- I'm sorry, that  
7 would include planning districts like South Delta and some  
8 of the others that are not in boldface.

9           South Delta's population fell by almost 200,000  
10 people between -- I'm sorry. South Delta fell by about  
11 78,000 people between 2020 and -- between 2000 and 2020.

12           JUDGE JORDAN: I'm sorry. Is that total population  
13 or voting-age population?

14           A.       That's total population. These charts are total.  
15 BY MR. SAVITZKY:

16           Q.       And, Mr. Cooper, how did examining Black population  
17 growth change at this regional level inform your  
18 consideration of whether potential additional  
19 majority-Black districts could be drawn in Mississippi?

20           A.       Well, I looked at the total population change, and I  
21 also looked at Black population change. And there was  
22 significant growth in the Black population in several of  
23 these Planning and Development Districts, notably North  
24 Delta, Central, and Southern.

25           Q.       And how does it -- how does your analysis of where

1 on a regional level there might be Black population growth  
2 inform whether or not you may be able to draw an additional  
3 majority-Black district?

4 A. Well, if you look at, say, North Delta, the Black  
5 population in 2000 was 105 -- I'm sorry. I lost my place.  
6 120,499 -- again I've lost my place -- 80,626 and it has  
7 now grown to 120,419. So there's a big jump in the Black  
8 population in the North Delta region for one, and that's  
9 where the Senate district that was kind of focused on in  
10 earlier discussions here has been drawn from my  
11 perspective.

12 Q. And you mentioned by the way that East Central  
13 planning development district region, the Black population  
14 was stable there. What's been happening with the white  
15 population in that area?

16 A. Declining. It's dropped by 22,000 persons, almost  
17 23,000 persons since 2000 from a population of 142,721 down  
18 to 119,855. So that's another area that could be examined  
19 for new potential majority-Black district, given the white  
20 population loss.

21 Q. And why is that? What would happen to the Black  
22 population in that region if you have stable Black  
23 population and decreasing white population?

24 A. Well, if the Black population in that region goes  
25 up, it's more concentrated to a higher percentage.

1 Q. And, Mr. Cooper, let's look at the next slide. This  
2 is figure 5, page 17 of your report. Across the five  
3 regions that we just talked about, about approximately how  
4 much has the Black population grown over the last two  
5 decades?

6 A. I think it's about 120,000.

7 Q. Now, based on -- looking at the next slide, based on  
8 the 2020 census, did you calculate the ideal population  
9 size of a Senate seat and a House seat in Mississippi?

10 A. Yes. As the state would have done when drawing  
11 those state's districts. The ideal is Senate district size  
12 is almost 57,000 people, and the idealistic House size is a  
13 little over 24,000.

14 Q. And you mentioned the Black population overall grew  
15 by about 120,000 over the last two decades. Assuming  
16 districts that are 100 percent Black, how many state Senate  
17 districts would that level of growth equal out to?

18 A. Well, it would be two districts comprised entirely  
19 of Black persons.

20 Q. And what about for the House, how many House  
21 districts would that equal out to?

22 A. It would be five House districts comprised entirely  
23 of Black persons. 100 percent Black, so that just cries  
24 out for additional Black-majority districts.

25 Q. Well, I was going to ask you -- you don't actually

1 draw 100 Black districts.

2 A. Of course not.

3 Q. So why is that yardstick, you know, helpful?

4 A. It just suggests -- it doesn't guarantee that it  
5 would be very easy to draw additional majority-Black  
6 districts in the state of Mississippi in these specific  
7 areas in particular: in the Central Planning Development  
8 District, North Delta, Southern, and Three Rivers.

9 Q. And, Mr. Cooper, let's move on and talk about the  
10 benchmark plans, the 2022 enacted plans I should say, and  
11 your analysis of those. Did you examine the Senate and  
12 House plans that were passed by the state in 2022?

13 A. Yes.

14 Q. And for the record, I would note that the Block  
15 Equivalency Files that represent those plans are in  
16 evidence already as Joint Exhibit 4 and 5 for the Senate  
17 and House plans, respectively.

18 Now, Mr. Cooper, did you examine the prior plans  
19 that were in effect before the 2022 plans were put into  
20 place?

21 A. Yes. There are maps that zoom on the benchmark  
22 plans for the House and the Senate, 2019 Senate and the  
23 2011 House, because the House plan was not changed over the  
24 course of the decade, unlike the Senate plan.

25 Q. And for the record, I would note the Block



1     Equivalency Files, the digital files representing those  
2     prior plans are also in evidence already; that's Joint  
3     Exhibit 2 for 2019 Senate plan. Joint Exhibit 3 for the  
4     2012 House plan.

5             JUDGE JORDAN: I'm sorry. You trailed off at the  
6     end. What did you say?

7             MR. SAVITZKY: Joint Exhibit 3 for the 2012 House  
8     Plan that had previously been in place before the 2022.  
9     BY MR. SAVITZKY:

10     Q.       Now, Mr. Cooper, we can go to the next slide. Let's  
11     take a look at the state Senate map first, and for  
12     reference, I'm pulling up figures from pages 23 and 25 of  
13     your report. How many black-majority districts did you  
14     count in the 2019 Senate plan that was in place prior to  
15     this?

16     A.       Well, there were 15 according to the 2020 census.

17     Q.       And how many black-majority districts do you count  
18     in the 2022 plan?

19     A.       Fifteen.

20     Q.       There has been no change in the number of  
21     Black-majority districts in the Senate?

22     A.       No change.

23     Q.       In your estimation, does the 2022 Senate plan  
24     staying with 15 black-majority districts reflect the  
25     population change patterns that we see in the 2020 census?

1 A. No.

2 Q. Now, Mr. Cooper, I'm going to pull up figure 18,  
3 page 50 of your report for reference. What does this  
4 figure that we're looking at comparing?

5 A. Well, I think this is a interesting table. It shows  
6 the percentage of the Black voting-age population that  
7 actually resides in a majority-Black Senate district under  
8 both the 2022 Senate Plan and also under the illustrative  
9 Senate plan that I drew in the second row.

10 And you can see that under the 2022 Senate plan,  
11 barely half of the Black voting-age population lives in a  
12 district that is majority Black.

13 Q. And how does that compare to the percentage of white  
14 voters in white-majority districts?

15 A. Interesting almost -- well, almost 84 percent of the  
16 white population lives in a majority-white Senate district,  
17 so there is a gap there of almost 34 percentage points  
18 between the percentage of Blacks and Whites in respective  
19 districts that would be their race.

20 Q. And what does this disparity between Black voters in  
21 Black-majority districts and white voters in white-majority  
22 districts mean as a practical matter?

23 A. It would, again, suggest that perhaps districts  
24 could be drawn in addition to the 15 in the state Senate  
25 Plan. No guarantee, but it is an indicator.

1 Q. And, Mr. Cooper, you mentioned earlier -- let's look  
2 at the next slide. You mentioned your illustrative plan  
3 contains four additional Black-majority districts. How  
4 does the addition of those majority-Black districts affect  
5 this disparity you noted?

6 A. It removes the gap by about half. So under the  
7 illustrative Senate Plan, about 58 percent of the Black  
8 voting-age population would be in a majority-Black  
9 voting-age district, and about three-quarters of the white  
10 population would be in a majority-white district. So the  
11 gap there is 17 percent, roughly half of the present-day  
12 34 percent.

13 Q. And turning to the next slide and looking at the  
14 House Plan for just a second, how many Black-majority  
15 districts do you count in the 2012 Benchmark House Plan?

16 A. I counted 42 under the 2020 census.

17 Q. And how many are there in the 2022 plan?

18 A. Twenty-two.

19 Q. Twenty-two?

20 A. I'm sorry. 42 under the 2020 census. Excuse me.

21 Q. And so there is no change in the number of  
22 majority-Black House Districts either?

23 A. No change.

24 Q. In your estimation, does the 2022 House Plan staying  
25 with 42 Black-majority districts reflect the population

1 change patterns we see in the 2020 census?

2 A. It does not. Particularly if you go back to the say  
3 the Benchmark Plan during 2011 redistricting based on the  
4 2010 census, there were 41 House District, so one  
5 additional district has been added since the mid2000s. I  
6 don't know if that was just organic. Perhaps one of the  
7 districts in DeSoto County became majority Black with the  
8 increase in the Black population up there. But there has  
9 been one -- one House District has been added since the  
10 2001 redistricting.

11 Q. And, Mr. Cooper, I'm going to pull up -- go to the  
12 next slide. Is this the same analysis that you did  
13 comparing Black voters in Black-majority districts with  
14 white voters in white-majority districts for the House side  
15 of the equation?

16 A. Yes.

17 Q. And did you notice a gap between Black voters in  
18 Black-majority districts and white voters in white-majority  
19 districts for the House as well?

20 A. Yes, there is still a gap. The percentage of the  
21 Black population living in a -- or the Black voting-age  
22 living in a majority-Black House district is a little over  
23 62 percent versus 83 percent using the same metric for the  
24 non-Hispanic white voting-age population in majority-white  
25 districts. So that is a 20-percentage-point gap.

1 Q. And, Mr. Cooper, the by the way, did you also look  
2 at this comparison of Black voters in Black-majority  
3 districts versus white voters in white-majority districts  
4 at the regional PPD level as well?

5 A. I did.

6 Q. And did you find that this same gap existed in this  
7 metric in some of those regions as well?

8 A. Yes. In some places, it's more severe.

9 Q. Let's move ahead two slides and talk about the  
10 illustrative plans that you drew. Mr. Cooper, I'm going to  
11 call them the illustrative Senate Plan and the illustrative  
12 House Plan, if that works for you?

13 A. Yes, sir.

14 Q. And before getting into the substance, I want to  
15 talk about the process you used to draw these maps. In  
16 drawing these plans --

17 JUDGE JORDAN: I tell you what, it's almost noon,  
18 and that sounds like a good place to stop, is it?

19 MR. SAVITZKY: It is a perfect place to stop.

20 JUDGE JORDAN: Yeah. All right. So it's 11:55.  
21 The Court will be in recess until 1:10, an hour and 15  
22 minutes. The Court will be in recess until 1:10.

23 You're in the middle of your testimony, so don't  
24 talk to anybody associated with the case during the break.

25 Is there anything before we adjourn?

1           MR. SAVITZKY: Nothing from the plaintiffs, Your  
2 Honor.

3           MR. CARDIN: Nothing, Your Honor.

4           JUDGE JORDAN: All right. The Court's in recess.  
5 Thank you.

6           MS. POWELL: All rise.

7                       (A lunch recess was taken.)

8           JUDGE JORDAN: Thank you. You may be seated.

9           All right. Before we start -- excuse me -- we are  
10 going to take the plaintiffs' motion for judicial notice  
11 under advisement. With respect to the defendants' motion,  
12 to the extent the defendants are asking for judicial notice  
13 that the Census Bureau produces statistics, the Court can  
14 take judicial notice of that. But the Court cannot take  
15 judicial notice of the actual data because the accuracy of  
16 the data is disputed. The census itself indicates as much  
17 as well as the other sources listed in the plaintiffs'  
18 response. Under Rule 201, if we were to take judicial  
19 notice of the data, then it would have to be considered  
20 conclusive, and that's not the case.

21           Having said that -- and we're making this ruling now  
22 because it could be that the defendants -- I think the  
23 defendants need to know that before their cross-examination  
24 here but it does seem to us that the -- and we can address  
25 this more fully later -- but that the census data is a

1 self-authenticating document under 902(5). I recognize  
2 there could be other issues, but the defendants' motion is  
3 denied except to the extent the Court would take judicial  
4 notice the Census Bureau routinely produces these  
5 statistics.

6 All right. Anything before we resume with  
7 Mr. Cooper? Doctor? Is it doctor or mister? I'm sorry.

8 THE WITNESS: Mister.

9 JUDGE JORDAN: Okay. You may proceed.

10 MR. SAVITZKY: Thank you very much, and good  
11 afternoon, Your Honors.

12 JUDGE JORDAN: Good afternoon.

13 **CONTINUED DIRECT EXAMINATION**

14 **BY MR. SAVITZKY:**

15 Q. Good afternoon, Mr. Cooper, and I believe we were on  
16 slide number 20. Picking it up and talking about the  
17 illustrative plans that you drew, the illustrative Senate  
18 Plan, and the illustrative House Plan we see on the left  
19 and right here and the images are from -- Mr. Cooper,  
20 before we get into the substance of your plans, I want to  
21 talk about your process. In drawing the illustrative  
22 plans, what did you use as a starting point?

23 A. The enacted plans. The enacted 2022 plans.

24 Q. And so having used the enacted plans as a starting  
25 point, are there any districts that are identical between

1 the 2022 plan and your illustrative plans?

2 A. Yes, I think there are 11 districts that are  
3 identical in the illustrative Senate Plan and 89 in the  
4 illustrative House Plan.

5 Q. And, Mr. Cooper, did you conduct any analysis of the  
6 overlap in population between the 2022 plans and the  
7 illustrative districts plan?

8 A. Yes. I think that in changing the districts, I  
9 tried to keep some subgroups of each district together to  
10 the extent possible, and determined that I believe it is  
11 75 percent of the population in the enacted plans stays  
12 together with the largest subset of the district they were  
13 in, if that makes sense.

14 So your neighbors, people that would be part of your  
15 community and neighbors would still be together, but they  
16 might be shifted into another district with a different  
17 district number.

18 Q. And you mentioned 75 percent of people would be in  
19 the same grouping, in the Senate Plan in the House Plan.  
20 What's the number there in terms of the percentage of  
21 folks?

22 A. There, it's very high because we're only changing  
23 three districts, so I think the sum total is a little bit  
24 over 94 percent of the population would stay together.

25 Q. Now, earlier we talked about how you identified



1 particular regions based on those planning development  
2 districts where you were seeing large Black population  
3 growth or increased concentration. You mentioned some of  
4 those. How did your identification of those regions inform  
5 your efforts in drawing the illustrative plans?

6 A. Well, by looking at the population change since the  
7 year 2000, as I think I had sort of mentioned earlier, some  
8 of the planning district areas really jumped out at me like  
9 North Delta, like Central, and like Southern. Those three  
10 had very significant Black population growth over that  
11 20-year period.

12 Q. And, Mr. Cooper, when you were drawing the  
13 illustrative plans, were you treating those regions as hard  
14 boundaries you needed to stay within?

15 A. Oh, no. No, I was simply using Planning and  
16 Development Districts as a contemporary way to, more or  
17 less, arrive at what would be a community of interest in  
18 certain parts of the state, and they are certainly not hard  
19 lines that cannot be crossed. Obviously, I've crossed them  
20 a number of times, as has the state, and you have to in  
21 order to meet population equality of plus or minus five  
22 percent. There's no way around crossing the lines.

23 Q. Mr. Cooper, in drawing your illustrative plans, did  
24 you consider the guidelines that the state's joint  
25 committee adopted in drawing the plans?

1       A.       Yes. I think the state's joint committee mentioned  
2       population equality and also trying to keep municipalities  
3       and precincts together.

4       Q.       And, Mr. Cooper, you mentioned earlier the  
5       traditional districting principles. Did you follow those  
6       principles in constructing these illustrative plans?

7       A.       I believe so.

8       Q.       And let's talk about the traditional districting  
9       principles. Without yet getting into the details, we'll  
10      talk about each one with more specificity. Can you just  
11      sort of enumerate what are the traditional districting  
12      principles?

13      A.       Well, perhaps foremost is population equality. One  
14      person, one vote. The state of Mississippi and the  
15      legislature determined that plus or minus five percent  
16      range compared to the ideal population size would be  
17      sufficient to meet population equality. I agree with the  
18      legislature on that point. So I stayed within plus or  
19      minus five percent.

20              And the next important traditional redistricting  
21      principal would be congruity. You have to make sure the  
22      districts you draw are together and not separated,  
23      generally speaking. Certainly in Mississippi, there's no  
24      reason to have two parts of a district in different  
25      districts. It might be the case that you would argue that

1 be the situation in a state with a big river running down  
2 the middle of it or something.

3         The other important redistricting principal is  
4 drawing districts that are reasonably shaped and relatively  
5 compact. There are ways to analyze those numerically,  
6 quantitatively and I've done that in the report with three  
7 measures out of probably at least 12 to 15 that are  
8 available in the Maptitude For Redistricting Software.  
9 I've used the most common measures, the Reock and the  
10 Polsby-Popper, and supplemented that with the Convex Hull  
11 compactness measure which tends to discount for some of the  
12 weird lines that may crop up because of twists and turns in  
13 the Mississippi River or odd municipal lines.

14 Q.       Mr. Cooper, is adhering to county or precinct lines  
15 a traditional redistricting principal?

16 A.       Yes.

17 Q.       And I see you list some of them on pages 19 and 20  
18 of your report. Is -- you note minority vote dilution. Is  
19 that a traditional redistricting principal?

20 A.       Absolutely. Absolutely.

21 Q.       And you note incumbent as a traditional. Is that  
22 one you've considered as well?

23 A.       Well, that's sort of in the background but I don't  
24 know if it's actually considered to be a traditional  
25 redistricting principal in the sense that you absolutely

1 have to keep all incumbents in separate districts.

2 Sometimes it's just simply not possible.

3 And unfortunately, I was never able to obtain  
4 complete information about all of the incumbents in terms  
5 of where they lived from campaign finance filings, the ACLU  
6 analytic staff got a number of addresses and the state  
7 legislature actually posted addresses also of some  
8 incumbents at least their home towns, so I used those two  
9 sources to determine whether or not incumbents were paired,  
10 and that was based on incumbents as they existed in the  
11 summer of 2023, not taking in to account the recent  
12 election.

13 Q. Now, Mr. Cooper, stepping back. What's the function  
14 of these different criteria, these traditional districting  
15 principles, for a map drawer?

16 A. Well, one must constantly balance all these. Some  
17 are very, very important. Like one person, one vote in a  
18 non-dilution of a majority voting struggle but all of those  
19 factors are constantly in my mind as I'm drawing a plan and  
20 I really don't make any of them predominant, except perhaps  
21 for the plus or minus five percent rule. That's pretty  
22 hard and fast.

23 Q. And Mr. Cooper, let's talk a little more  
24 specifically about some of those considerations. You  
25 mentioned population equality as a traditional

1     redistricting principal. Did you consider population  
2     equality here?

3     A.       Yes.

4     Q.       Okay. And do all of the districts in your  
5     illustrative plans stay within that plus or minus five  
6     percent deviation that you mentioned?

7     A.       Yes, based on the 2020 census.

8     Q.       Now, we talked about non-dilution of minority voting  
9     strength as a principal you consider. Say just a little  
10    bit more, what is that?

11    A.       Well, that just means that when you're drawing a  
12    plan, whether it be a state legislature or a city council  
13    seat, one should take into account where the minority  
14    population lives and try to avoid putting everybody in a  
15    single district and avoid splitting neighborhoods up that  
16    are predominant minority and placing them in different  
17    districts.

18            The first category would be packing or  
19    overconcentration. The second would be cracking or  
20    fragmenting the minority voting strength and that would  
21    include in this case, the African-American population but  
22    in other states, in other places, it might be the Latino  
23    population or the Indigenous population.

24    Q.       So Mr. Cooper, does that mean you considered race as  
25    one of the considerations when you were drawing the

1 illustrative plans?

2 A. I considered race. Certainly, the *Gingles* 1 inquiry  
3 requires you to show that a district can be created that is  
4 50 percent plus one of the minority at issue so I'm aware  
5 of race. It just did not predominate.

6 Q. Well, Mr. Cooper, as a practical matter, what  
7 analytical tools did you use as you were drawing these  
8 plans to determine where the Black population or where it  
9 was more substantial?

10 A. Well, I tried to work strictly at the precinct level  
11 so I had on screen a map of the state with the current  
12 population by legislature district color coded by district  
13 and I overlaid that on to a map showing precincts, and put  
14 little dots over precincts that were racially diverse. In  
15 other words, plus three percent or more, so that allowed me  
16 to at least kind of know where the minority population  
17 lived in some parts of the state where I was not familiar.

18 Q. And Mr. Cooper, do you always have those dots  
19 visible over the precincts, 30 percent plus Black  
20 population?

21 A. Not always but I mean, it's -- generally, I do  
22 because I'm working on a statewide plan.

23 Q. And Mr. Cooper, do you ever use racial shading maps  
24 where you look at precincts or some other -- some other,  
25 you know, precinct geography with shading that shows

1 different colors for different levels of Black population,  
2 ten, 20, 30, 40, 50, 60 percent?

3 A. Never ever. The closest I come to that is when I  
4 show the minority population by county. When I am drawing  
5 a plan, I never look at districts that are shaded in this  
6 manner that I think some of the experts for the defense try  
7 to claim that I use. I never have and I never will.

8 Q. And Mr. Cooper, you mentioned that you sometimes  
9 have dots over precincts that are 30 percent plus Black  
10 voting age population. Why not use 50 percent?

11 A. Well, I mean, you could but then you'd be cutting  
12 out significant populations perhaps, significant areas that  
13 are racially diverse and would fit into a majority minority  
14 district.

15 Q. And what about sub-precinct geography? Do you ever  
16 go down and use those dots -- when you were drawing the  
17 illustrative Senate Plan and House Plans, did you see those  
18 dots or the racially information at a level below the  
19 precinct level?

20 A. No, I didn't because I rarely -- I didn't go down to  
21 the block level unless I had to, to more closely align with  
22 the municipality or for some reason, split a precinct to  
23 protect an incumbent. And in those cases, I just looked at  
24 the blocks and I oftentimes would put the total population  
25 of the block on the map of that particular area, so that I

1 can, you know, make sure I'm within plus or minus five  
2 percent but I did not use any kind of racial shading or  
3 even dots once I got down to the level because frankly, a  
4 lot of the splits of precincts are embedded in the enacted  
5 2022 plans. So the fact that a lot of precincts are split  
6 is not my work. It's the work of the legislature.

7 Q. And we can talk about that more. For now, I want to  
8 talk about another traditional districting principal that  
9 you mentioned, compactness. How did you consider  
10 compactness in drawing your illustrative Senate and House  
11 Plans?

12 A. Well, a large part was visually examining the  
13 districts as I was drawing them but I also had at my  
14 disposal the Maptitude For Redistricting Software which  
15 will generate a compactness score on command within a  
16 couple of seconds.

17 So I did look at that occasionally as I was drawing  
18 the plans because sometimes if the score is real low, you  
19 need to move in the other direction as quickly as you can  
20 in the sense that you want to keep the score higher, if  
21 possible.

22 Q. And did you visually examine the districts in your  
23 illustrative plans to make sure they are compact?

24 A. In my opinion, they are reasonably compact.

25 Q. And you mentioned some of those compactness metrics



1     that you can run as well. Did you run metrics for  
2     compactness in the illustrative plans as well as the 2022  
3     plans?

4     A.       Yes, I did.

5     Q.       Let's pull up the next slide. These are from page  
6     69 of your report, figure 27, summarizing those metrics and  
7     Mr. Cooper, can you tell us how did the compactness -- in  
8     terms of those metrics, how does compactness of your  
9     illustrative Senate Plan compare to the 2022 Senate Plan?

10    A.       A little bitter. A little better. Not a lot but a  
11    little. You wouldn't expect it to be a lot because I was  
12    trying to keep a large portion of the population together  
13    from the enacted plan and you'll see, if you just look at  
14    the majority Black districts, there, I think there is a  
15    significant district both in the Reock and certainly also  
16    in the Polsby-Popper scores but especially in the Reock  
17    score which is an area based measure looking at the score  
18    after you draw a circle around the district.

19    Q.       And looking at the House Plan, how does the  
20    compactness in terms of these metrics of your illustrative  
21    House Plan compare to the 2022 House Plan?

22    A.       There's very little difference. They're almost the  
23    same and that's no surprise because 89 of the 122 districts  
24    did not change.

25    Q.       Now, Mr. Cooper, you mentioned -- and we can go to

1 the next slide -- and there we go. You mentioned  
2 contiguity. Did you consider contiguity in drawing your  
3 illustrative plans?

4 A. Yes, and there's an automated module in Maptitude  
5 that tells you whether or not the districts are contiguous.

6 Q. And all your districts are contiguous in both your  
7 plans?

8 A. Yes, according to Maptitude.

9 Q. And now, we talked also about splitting political  
10 subdivisions. How, if at all, did you take splitting  
11 political subdivisions in to account in drawing your  
12 illustrative plans?

13 A. Well, I had on screen the boundaries for cities and  
14 towns in the state so I was aware of situations where I  
15 might be splitting a city or a town. I also had, of  
16 course, boundaries showing the precinct lines and  
17 sometimes, you have to make a decision. Is it better to  
18 split a precinct or split a town? And it can go either way  
19 just depending on the circumstances.

20 Q. How about county boundaries, were you minding those?

21 A. Oh, of course. Yes.

22 Q. And Mr. Cooper, did you run any metrics evaluating  
23 the way your plans and the 2022 plans split those various  
24 political subdivisions?

25 A. Yes, as I always do in the state legislative plans.

1 Q. Let's now go to the next slide, and look at  
2 summaries from pages 47 and 71 of your reports of those  
3 splits reports. Looking first at the Senate, that chart at  
4 the top, how does your -- how does your 2022 Senate Plan  
5 stack up compared to the -- or excuse me. How does your  
6 illustrative Senate plan compare to the 2022 plan with  
7 respect to county splits?

8 A. Better. It splits 34 counties as opposed to 43 in  
9 the 2022 Senate. Perhaps an more important column is total  
10 county splits which would include all the times you split a  
11 county, not just one time. And in that sense, it's a  
12 little bit closer. 52 for the illustrative Senate and 58  
13 for the 2022 Senate.

14 Q. And, Mr. Cooper, how about precinct splits, how do  
15 your plans compare on precinct splits?

16 A. A little better. They are 38 in the illustrative  
17 Senate and 41 in the 2022 Senate.

18 Q. And what about municipal splits?

19 A. Even better. 253 of the municipalities in the state  
20 are not split versus 244 in the 2022 Senate. And if you  
21 look at, again, multiple splits of municipalities, the gap  
22 or advantage to illustrative Senate widens. There are 110  
23 municipal splits in the illustrative Senate versus 128 in  
24 the state Senate.

25 Q. And by the way, I see "VTD splits". VTD, is that a

1 precinct?

2 A. That would be the Census Bureau's designation of  
3 what constituted a precinct at the time of the 2020 census.  
4 It may not reflect -- and I'm sure it doesn't after  
5 county-level redistricting.

6 Q. And, Mr. Cooper, just looking briefly at the House,  
7 how does your illustrative House Plan compare to the 2022  
8 House Plan with respect to county splits?

9 A. Same number of county -- same number of split  
10 counties, but total county splits, it is better. There are  
11 167 county splits versus 179. Another way to look at it is  
12 just the number of unique county district splits and so  
13 you -- I mean, you just tally them up and -- and the --  
14 you'll have 167, so you don't have to look at a map and  
15 just count them. And there are tables in my report that  
16 identify those splits.

17 Q. And, Mr. Cooper, how about on precinct splits, how  
18 does your illustrative plan compare to the 2022 House Plan?

19 A. What was that question?

20 Q. On precinct splits, how do the two House plans  
21 compare?

22 A. Oh, for the two House plans, 160 -- I'm sorry. 228  
23 VTD splits in the illustrative House and 255 for the 2022  
24 House.

25 Q. And on municipalities plans, how would you

1 characterize the difference between the plans?

2 A. A slight edge. The total municipalities split would  
3 be -- the total municipal splits would be 225 in the House  
4 Plan and 221 in the illustrative plan. And municipalities  
5 not split is about the same, 216 in the House and 218 in  
6 the illustrative House.

7 Again, you would not expect there to be much  
8 variation, because I am only drawing three additional House  
9 districts -- or three additional majority-Black House  
10 Districts.

11 Q. And yet there is a reduction of over 20 county  
12 splits -- or 20 VTD splits?

13 A. Right. But there is the ripple effect involved in  
14 the -- so more districts have changed as I mentioned than  
15 just the three.

16 Q. Now, Mr. Cooper, let's go on to the next slide and  
17 talk about communities of interest, which you mentioned as  
18 another districting consideration. Generally speaking, how  
19 did you go about considering communities of interest in  
20 drawing your plans?

21 A. Well, I was aware of various regions in the state  
22 that aren't really displayed on the map, like the Delta  
23 running from Catfish Row in Vicksburg up to the Tennessee  
24 state line or the Peabody Hotel in Tennessee. And -- and,  
25 you know, northwest -- northeast Mississippi is Appalachian

1 really. I mean, part of the Appalachian Regional  
2 Commission Highway System goes into -- I don't know if I'm  
3 pronouncing this right, Tishomingo County. How do you say  
4 that?

5 JUDGE JORDAN: Tishomingo.

6 A. Okay. So that's just one example of a part of the  
7 state that has very few Black people in it. And so I was  
8 looking at factors like that as I was drawing the plan, and  
9 the planning districts, I believe are a perfect  
10 contemporary indicator of communities of interest.

11 BY MR. SAVITZKY:

12 Q. Well, what about municipalities, are those a  
13 community of interest?

14 A. Oh, of course. And then they are even more  
15 important than planning district commissions frankly.

16 Q. And how about counties, are counties communities of  
17 interest?

18 A. Absolutely.

19 Q. Let's talk about some of the communities of interest  
20 that you looked at. You've already talked about  
21 municipalities and how your plans stacked up in terms of  
22 municipalities split. I see in your report you also did an  
23 analysis of school district splits. Are school districts a  
24 community of interest?

25 A. Oh, absolutely. They are a very important community

1 of interest, because the legislature makes many decisions  
2 that impact school districts and individual schools and the  
3 students themselves. So that's -- that's a clear community  
4 of interest.

5 Q. And looking at the next slide just at a very high  
6 level, how do your plans stack up with respect to school  
7 district splits?

8 A. Significantly better interestingly enough. The 2022  
9 Senate has 59 school districts that are not split. The  
10 illustrative Senate has 74, and you see the same  
11 significant difference with total school district splits.  
12 181 for the 2022 Senate and 151 for the illustrative  
13 Senate. The 2022 Senate splits 56 majority-Black school  
14 districts versus 38 in the illustrative Senate.

15 Q. And, Mr. Cooper, moving to the next slide, did you  
16 consider the census designated metropolitan-micropolitan  
17 statistical areas as a potential community of interest?

18 A. I did. Those boundaries are established by the  
19 Office of Management and Budget Federal Agency in  
20 consultation with the Census Bureau, and those boundaries  
21 do change over time. I think last decade there was  
22 probably three different iterations. The latest iteration  
23 from the office of management and budget for metropolitan  
24 and micropolitan areas was released in late July of 2023.

25 I have yet to see a Census Bureau map of those

1 areas, but they're identified. You can get that from the  
2 internet. And I think probably later in the decade, there  
3 will be another change. It's based on commuting patterns  
4 primarily between different counties.

5 Q. And, Mr. Cooper, did you run any metrics reports  
6 looking at splits of metropolitan and micropolitan  
7 statistical areas?

8 A. Yes.

9 Q. And did you run reports looking at splits of those  
10 planning and development district regions?

11 A. Yes.

12 Q. And let's look at those very briefly. Pulling up  
13 the slides --

14 MR. CARDIN: Your Honor, may it please the Court.  
15 I'm going to object to the relevance of this line of  
16 questioning. It -- PDD split, metropolitan statistical  
17 errors, micropolitan statistical errors have no relevance  
18 to any of the issues in this case.

19 JUDGE JORDAN: Response?

20 MR. SAVITZKY: Your Honor, Mr. Cooper's analysis is  
21 already in evidence. His report is in evidence, only  
22 talking about how the plans fare. He's discussed these are  
23 potential communities of interest. Obviously, there are  
24 many different communities of interest and he's comparing  
25 how the plans stack up on them, so we will address this



1 very briefly and then keep moving on.

2 JUDGE JORDAN: All right. I'm going to overrule.  
3 The information is already in the record. It's part of the  
4 basis of how he drew the lines. I think it's probative.  
5 You may not agree it's correct but it's what he did so  
6 overruled. Go ahead.

7 MR. SAVITZKY: Thank you, Your Honor.

8 BY MR. SAVITZKY:

9 Q. And Mr. Cooper, very briefly, how do your plans,  
10 your illustrative plans stack up with respect to PPDs  
11 metropolitan and micropolitan statistical areas?

12 A. A little better on planning district splits in the  
13 Senate and House. A little better on MSA splits in the  
14 Senate but in the House, it's a dead heat, 74/74, and the  
15 smaller areas, MPSAs are generally single counties but they  
16 can be, I think, more than one county.

17 And in that instance, well, MPSAs, micropolitan  
18 areas must have an urban area that is of at least 10,000 to  
19 50,000 people and the metropolitan statistical areas would  
20 have an urban area that is over 50,000 people and so these  
21 MPSA splits amount to 29 in the illustrative Senate versus  
22 28 in the -- excuse me -- 2022 Senate so one better in that  
23 instance.

24 Q. All right. And Mr. Cooper --

25 A. One better for the state.

1 Q. Understood. And Mr. Cooper, just thinking about  
2 some of those other communities of interest. Did you  
3 consider transportation connections between different areas  
4 in working on your illustrative plans?

5 A. Yes. When I had the map on screen, I had available  
6 at my disposal a straight level information but also all  
7 the major highways. And as I zoomed out, generally, I was  
8 looking more at the primary roads as opposed to secondary  
9 roads but that information is there.

10 Q. And to the extent you were aware of them, did you  
11 consider historical connections between different areas or  
12 communities as you were drawing your plans?

13 A. Yes, I think oftentimes the U.S. Highway System as  
14 opposed to the interstate system often shows long standing  
15 communities of -- of interest and connections between  
16 different parts of one county or another, because you're  
17 driving right through the county instead of up on a level  
18 looking down from the interstate.

19 Q. And Mr. Cooper, to the extent you were aware of  
20 them, did you consider socioeconomic connections or  
21 commonalities between different areas as you were  
22 constructing your plans?

23 A. Yes, I went beyond just the statewide information  
24 from the ACS, and it produced a set of tables, that are  
25 included I think on a CD with my testimony, that breaks out

1 the socioeconomic characteristics of the Black population,  
2 non-Hispanic white population, and Latino for every single  
3 county in the state and all municipalities that are at  
4 least, I believe 20 percent Black with populations that  
5 over 2500 total population so it doesn't include all  
6 municipalities but many of them.

7 And it breaks out the same kind of measures that you  
8 see in the 2021 ACS but it's from the five-year American  
9 Community Survey published by the Census Bureau on an  
10 annual basis. I am using the 2015-2019 ACS that was  
11 released in the fall of 2021. I'm doing that because the  
12 pandemic kind of skewed things there for a couple of years.

13 Q. And Mr. Cooper, to the extent you're aware of them,  
14 did you consider whether people in particular areas might  
15 have any shared interest as you were constructing the  
16 plans?

17 A. Yes. Well, I then prepared, in addition to the  
18 county and municipal charts, a whole other set of charts  
19 that are at the planning district level for general  
20 information since we have kind of focused on planning  
21 districts. That is not quite as comprehensive as you get  
22 at the county level because certain pieces of information  
23 at the county level can't be merged together at -- up to  
24 the planning district level, like median numbers, and mean  
25 averages, and that sort of thing.

1 Q. And Mr. Cooper, moving along. You also mentioned as  
2 a -- as a factor pairing incumbents. Were you able to  
3 take, to the extent you had information on it, incumbent  
4 locations or addresses in to account as you were  
5 constructing these plans?

6 A. I tried but again, some of them were PO boxes and so  
7 I think I am fairly certain that as of August 2023, I had  
8 paired four incumbent in the House and two in the Senate  
9 but things have changed since that time.

10 Q. Now, Mr. Cooper, that's a lot of different factors  
11 to consider. How do you manage to factor all of these in  
12 as you're drawing a plan?

13 A. Well, the name of the game is balancing all of these  
14 factors as you're drawing a plan. No one factor should  
15 really predominate except perhaps for one person, one vote  
16 and the non-dilution of minority voting strength.

17 Q. Well, Mr. Cooper, do the criteria ever conflict?

18 A. Oh, they conflict all the time. Yes. There are  
19 conflicts for sure.

20 Q. How do you balance when they conflict?

21 A. I just did the best I can. I, you know, make a  
22 decision. These -- clearly, you can create four more  
23 Senate districts and three more House Districts, but the  
24 plans could be configured in a different fashion with that  
25 same result.

1 Q. And were you able, in your opinion, to balance all  
2 these different factors in drawing these illustrative  
3 plans?

4 A. In my opinion, yes.

5 Q. Now, Mr. Cooper, you referenced this a little bit  
6 already. Do any factors get special weight when you're  
7 doing this balancing?

8 A. No, except for one person, one vote which is  
9 automatically available and it's really to determine  
10 whether you're in that plus or minus five percent range.

11 Q. And when you said about drawing these illustrative  
12 plans, did you have a maximum or minimum number of Black  
13 majority districts in mind?

14 A. No, I was not asked to produce a set number of  
15 districts nor did I attempt to produce a set number of  
16 districts based on some analysis that I had done prior to  
17 this beginning the project.

18 Q. Were you trying to maximize the total number of  
19 Black majority districts in the plans?

20 A. No, I was not. And you know, there -- yeah, I just  
21 was not trying to maximize the number.

22 Q. And Mr. Cooper, the balancing approach that you've  
23 described, is this the same approach that you took in  
24 drawing the plans that were at issue in *Allen versus*  
25 *Milligan* case?

1 A. Yes, I really focused on not splitting counties and  
2 keeping precincts whole while at the same time being aware  
3 of the way the legislature had drawn those districts, so I  
4 didn't want to make more changes than necessary.

5 Q. All right. Well, let's talk about the illustrative  
6 districts that you drew starting with Senate District 2.  
7 You identify this as a new Black majority district. I'm  
8 pulling up two images from Exhibit P1 and P2. It's page  
9 381 to 385 of your report. They show the 2022 plan on the  
10 left. Illustrative plan on the right. First, can you tell  
11 us --

12 JUDGE SOUTHWICK: Question about this report. Tell  
13 us, what is the Senate District as enacted on this  
14 left-hand side?

15 A. It is Senate District 11.

16 JUDGE SOUTHWICK: It's a two and a --

17 A. Part of it. Yeah, the two represents the numbering  
18 scheme that I have assigned to the illustrative plan but  
19 under the enacted plan, Senate District 11 is the district  
20 that goes from down around Quitman County up through Tunica  
21 County.

22 JUDGE SOUTHWICK: Is it basically what's in green?

23 A. Yes, well, yes. That is District 11. Right.

24 JUDGE SOUTHWICK: Does it flip over the blue  
25 turquoise DeSoto as the top right hand corner also?

1 A. Yes, the blue district is --

2 JUDGE SOUTHWICK: No, no. The green. The top left  
3 corner of your right hand chart.

4 A. That is also part of District 11. Oh, the top right  
5 corner. Excuse me. Yes, that is -- I wish I had the  
6 number in front of me. It's kind of hidden behind the  
7 legend.

8 BY MR. SAVITZKY:

9 Q. Mr. Cooper, looking at the 2022 --

10 JUDGE JORDAN: I'm sorry. I do want to get an  
11 answer to that. On the left side, are we correct that's a  
12 different color green than the top right?

13 A. Yes, you are correct and I can get you that number.  
14 I can get you the actual district number because it's just  
15 covered by the legend.

16 JUDGE JORDAN: That's okay so the bottom line is the  
17 '22 plan it is the same District 11 and it's the green that  
18 runs down sort of the western boundaries picking up Quitman  
19 and --

20 A. Tate.

21 JUDGE JORDAN: And the section that's below the  
22 blue. It's all that green -- that color green?

23 A. Right.

24 JUDGE JORDAN: And that's a different green on the  
25 right.

1 A. Yes, I guess after printing it out -- it was a  
2 little more evident from my computer screen and now, it's  
3 not so evident but it is a different green district.

4 JUDGE JORDAN: All right. That's helpful.

5 A. I think we're going to zoom in maybe at some point  
6 showing how the majority Black city of Horn Lake is divided  
7 and there you will see this other district I believe that  
8 we're talking about. Well, yeah, I think you will.

9 MR. SAVITZKY: And we can also -- if you'd like to  
10 take a look at the 2022 map, we can look at PTX1 at page 31  
11 and take a closer look at that map in particular.

12 A. And there are maps produced by the state in my  
13 declaration. Those are excellent maps so you can also use  
14 that to refer to.

15 BY MR. SAVITZKY:

16 Q. And looking a little more closely at this map,  
17 Mr. Cooper, the plans in different shades of green here at  
18 the top -- or the districts in different shades of green at  
19 the top in the 2022 plan.

20 A. Yes.

21 Q. Are those districts 11, 2, and 19 under the 2022  
22 plan?

23 A. Well, it's 11, 2, and 1, isn't it? The blue  
24 district.

25 Q. The blue district. The one to the right of the blue



1 district, that's under the legend?

2 A. That's 2.

3 Q. And we can zoom in here.

4 A. You can see, if you really zoom in, you can see it's  
5 2. The other thing I'll point out, there's a link to an  
6 online map of the illustrative plan with an overlay of the  
7 enacted plan and you can click those lines on and off  
8 depending. It shows municipal boundaries, shows county  
9 boundaries. It shows planning district boundaries. It can  
10 be clicked on and off. You can -- if you go to legend and  
11 look for the caliber base map, you can click off roads and  
12 see aerial imagery and you see the whole state all at once  
13 and it's a heck of a lot easier than flipping through all  
14 these exhibits. That's available for both the Senate and  
15 the House Plan.

16 Q. And in your exhibits in your report, do you also  
17 have these maps at the regional level that could be  
18 examined?

19 A. At the regional level. Right. Right.

20 Q. And now, Mr. Cooper, let's look at -- well, let's  
21 get our bearings a little more. This red outline that  
22 we're seeing -- focusing still on the 2022 plan -- is that  
23 the area of the additional Black majority district that  
24 you've drawn in the illustrative plan?

25 A. Yes.

1 Q. And I see dotted lines or maybe they're sort of  
2 Black lines in here. What lines are those?

3 A. Those are the county lines. I'm sorry. The Black  
4 lines in the 2022 plan that you see there are lines  
5 demarcating the 2022 plan districts actually in some  
6 instances I think. But on the other hand, yeah, that has  
7 to be but there's also some dotted lines showing counties  
8 that sometimes are skewered, so it's not as evident on this  
9 map as it would be on other. If you look at the  
10 illustrative map, you can see how the dotted line, it's  
11 really a dotted line I think that separated Panola from --  
12 from Tate county.

13 Q. And is the red outline here sort of the same in both  
14 of these maps overlaid on the 2022 plan?

15 A. Yes, it's identical. It shows the illustrative  
16 district that I drew in the same area where the state drew.  
17 The illustrative district -- excuse me -- enacted District  
18 11, which is majority Black, but failed to include  
19 significant parts of the Black population in DeSoto County  
20 who live around Horn Lake and Southaven.

21 Q. And what's happening demographically in this region  
22 that we're looking at here?

23 A. Well, I think it's the fastest growing part of the  
24 state. At least it has been since the year 2000, I  
25 believe. Apart from the area around the coast and the

1 southern planning district area.

2           It's certainly the fastest growing Black population  
3 in the state. I think I may have mentioned this. The  
4 DeSoto County Black population in the year 2000 was  
5 12 percent. Not even 12 percent. As of this 2020 census,  
6 it is about 31, 32 percent and I seen recent estimates from  
7 the Census Bureau that were released in the late summer of  
8 2023 that indicate that the population in DeSoto County has  
9 grown by about 7500 people since the 2020 census and the  
10 Black population in DeSoto County has grown by about 8500  
11 people. So that's showing that the Black population in  
12 absolute numbers is contributing more to the total  
13 population than any other race.

14 Q.       All right. Well, Mr. Cooper, let's zoom in over the  
15 next slide and zoom in on the illustrative district that  
16 you drew. Can you describe the district that you drew in  
17 this area?

18 A.       In the area of Tunica County and DeSoto County?

19 Q.       Yeah, just describe the additional majority Black  
20 district you drew.

21 A.       Yeah, it's a simple district because it includes all  
22 Tunica County which is in the north delta area. It is also  
23 part of existing Senate District 11 so it's certainly  
24 appropriate to include Tunica with DeSoto County but beyond  
25 Tunica County, I then went into DeSoto County and -- at the

1 precinct level.

2 I drew some additional parts of western DeSoto  
3 County that are not in enacted House District -- Senate  
4 District 11 around Horn Lake and in so doing, I was able to  
5 create a new majority Black Senate District 2 -- majority  
6 Black Senate District 2 while at the same time, maintaining  
7 Senate District 11 as majority Black but focused further  
8 south, as you can see on this map, so that Senate District  
9 11 now, which is majority Black, is -- is more rural and  
10 includes Panola -- all of Panola, all of Quitman and all of  
11 Coahoma, and even further south.

12 Q. Now, Mr. Cooper is the additional district you drew  
13 here, District 2, compact?

14 A. Oh, absolutely. It's compact visually. There's a  
15 clear transportation corridor running right from Coahoma  
16 County along the county line all the way up to Walls and on  
17 to the Tennessee line, and that's Highway 61. Obviously,  
18 an important highway. So, yeah, it's compact, reasonably  
19 shaped, and the transportation corridor makes it ideal for  
20 an illustrative majority-Black district.

21 Q. And to what extent did municipal lines play a role  
22 in your configuration of this district?

23 A. I tried to follow municipal lines around Horn Lake.  
24 Horn Lake is split three ways in the enacted Senate Plan,  
25 and I was able to draw a plan, this plan in particular,

1     that only splits Horn Lake two ways.

2     Q.       And, Mr. Cooper, did keeping counties whole figure  
3     into your configuration of this district?

4     A.       Well, yes. Because I did it this way, I was able to  
5     eliminate the split in Tate County, and I think maybe I  
6     eliminated a split elsewhere. I'm not sure exactly where,  
7     but certainly the Tate County split was removed. Maybe  
8     Panola County is also fixed.

9     Q.       And, Mr. Cooper, let's go to the next slide looking  
10    at a figure from page 383 of your report. You mentioned  
11    Horn Lake before. Just tell us a little bit about how Horn  
12    Lake is configured in the enacted 2022 plan?

13    A.       Yes. Here you can see enacted Senate District 11,  
14    which is majority Black, just picks up a little tiny part  
15    of Horn Lake in the northwest area and relegates the rest  
16    of Horn Lake to majority-white District 1 and  
17    majority-white Senate District 2.

18            Now, Horn Lake is I think 50 percent Black, and it's  
19    got about 27,000 people. So I can't think of any reason to  
20    split it three ways.

21    Q.       And in your report, you describe the drawing of this  
22    area as "cracking". What did you mean by that?

23    A.       Well, the Black population of Horn Lake has been  
24    submerged into majority-White Districts 1 and 2 by -- as a  
25    result of this three-way split.

1 Q. And moving on to the next slide. Why does it make  
2 sense to connect Horn Lake with the rest of DeSoto County  
3 and Tunica County in your opinion?

4 A. Well, it's -- it's an area that the state has  
5 included, at least in parts, in the legislative plan that  
6 was adopted in 2022. It's in western DeSoto County, and  
7 it's just a stone's throw from Walls, which is a town  
8 that's been there for a long time that's majority Black.  
9 And it's a straight shot by Highway 61 to Tunica Resorts.  
10 Once you get there, that's most of the population of the  
11 district, because further south, obviously Tunica takes on  
12 a more rural appearance. But overall, it's a very compact  
13 district. It just cries out to be considered as a good  
14 option for *Gingles* 1, I think.

15 Q. All right. And let's move on and talk about the  
16 next additional majority-Black district in your report.  
17 We're looking at pages 392 and 394 from your report. '22  
18 plan on the left. Illustrative plan on the right. And  
19 just to be clear, is this the same sort of type of map that  
20 we were looking at previously?

21 A. Yes. Just the Senate Plan and zooming in on the  
22 Hattiesburg area with the same styling, yes.

23 Q. And you mentioned this is the Hattiesburg area. Can  
24 you just describe what happens to the Hattiesburg area  
25 under the 2022 Senate Plan?

1 A. Well, you can see the different colors here, that  
2 you've got basically five Senate Districts kind of  
3 converging on the Hattiesburg area. That would include  
4 both Lamar County and where most of the population is  
5 really over in Forrest County. And so as I drew Senate  
6 District 9, which is majority Black, I was able to keep  
7 most of Hattiesburg in a majority-Black district. And most  
8 of the district is in Forrest County, but it does spill  
9 over a little bit into Lamar County.

10 Q. And I noticed a turquoise district there in the 2022  
11 plan. How far up, if you know, does that district extend?

12 A. That has sort of an odd shape. It goes up though  
13 Jones County and then into Jasper. It picks up all or part  
14 of Laurel, I believe.

15 Q. Now, let's focus on your plan, and we can go to the  
16 next slide. Can you describe the illustrative Senate  
17 District 9, Black-majority district that you drew in this  
18 area in Hattiesburg?

19 A. Yes. It's drawn to include as much as Hattiesburg  
20 as I could, basically at the precinct level. I do think  
21 there is an incumbent somewhere in all of this that had  
22 some impact on the final version of the district that I  
23 drew. And it includes, as I say, Hattiesburg and then a  
24 separate jurisdiction called West Hattiesburg, which is in  
25 Lamar County, and another one that is a municipality called

1     Arnold Line. But, basically, it is a district that is, at  
2     least from the standpoint of population, dominated by the  
3     city of Hattiesburg.

4     Q.       And were you minding municipal lines when you were  
5     constructing this district?

6     A.       By and large, yes. I think some of Hattiesburg is  
7     split, but I was following precincts, generally speaking,  
8     to the extent that I could. And you can see that I  
9     followed, I believe, the municipal boundary there between  
10    Petal, which is a smaller city, and Hattiesburg.

11    Q.       And, Mr. Cooper, is this district compact?

12    A.       Oh, absolutely. It's -- I mean, you can look at the  
13    legend and see the -- that it's -- I don't have a way to  
14    measure it now, but it's extremely compact. It's only in  
15    -- in Hattiesburg and West Hattiesburg, Arnold Line, and a  
16    few other communities in Forrest County and Lamar County.  
17    And it doesn't go way north to pick up pieces of Jones  
18    County and Laurel and then on into Jasper county.

19    Q.       And we can look at the next district. Turning from  
20    pages 386 and 388 of your report, looking at illustrative  
21    Black-majority District 17. Again, 2022 plan, left.  
22    Illustrative plan on the right.

23            Now, can you describe the area that we're looking at  
24    here, Mr. Cooper?

25    A.       Well, on the left, we're looking at part of the



1 Golden Triangle Planning District and part of the Three  
2 Rivers Planning District. You can see Tupelo in the north,  
3 which is actually part of the illustrative Senate District  
4 I've drawn outlined in red there. The city of Columbus and  
5 that area is slightly off the map. You can't really see  
6 it. But that's the area that I've included.

7 I looked at Three Rivers because there's never been  
8 any piece of a Senate District, as best I can tell, that is  
9 majority Black that is in Three Rivers Planning District or  
10 in that part of the state I should say, because I don't  
11 want people to think that I'm hung up on planning  
12 districts. But it's quite clear that you can easily draw a  
13 district that starts down around Clay County and goes all  
14 the way up to the southern part of Tupelo, and basically  
15 follows the Tennessee-Tombigbee Waterway for much of the  
16 distance in to Amory and then following precinct lines into  
17 southern Tupelo.

18 It's only Highway 45 running out of West Point up to  
19 Tupelo is like a -- it's 45 miles, 45 minutes. There's  
20 no -- nothing about it that would suggest this is not a  
21 reasonably compact district. What more is there to say?

22 Q. I won't ask you any more questions about it then.  
23 But I will ask you this, Mr. Cooper, just stepping back.  
24 We've been looking at some of these different maps, and I  
25 notice that generally they seem to be displayed in very

1 vivid colors. Is that how they look in that Maptitude  
2 program when you're drawing the districts?

3 A. Yes. Sometimes I have different colors and then  
4 finalize it with a different version of colors to try to  
5 make sure I'm not placing two districts with the same color  
6 together. I understand that maybe I didn't make a strong  
7 enough distinction between Senate District 2 and Senate  
8 District 11. But still I think the difference can be seen.

9 Q. And, Mr. Cooper, why do you like to work in such  
10 bright colors for your districts?

11 A. Because I like to see what the district looks like.  
12 I don't know how anyone can tell what districts look like  
13 if all they are looking at is, like, ten different colors  
14 of gradations -- ten different colors of gradation of Black  
15 on a map and zoom out. You can't really see the districts,  
16 and you've got this rush of colors that just make no sense  
17 really. So I don't know where the defendants' experts  
18 get -- get the -- get the belief that I'm using racial  
19 shading, because I just don't. It's too confusing.

20 Q. All right. Let's look at the next Black-majority  
21 district that you've drawn in your illustrative plans. The  
22 T-Series pages 396 through 398 of your report, and I'm  
23 pulling it up for reference. And can you just generally  
24 describe what's the area of the state that we're looking at  
25 here?

1       A.       Okay. Well, this is in the -- to the south of  
2       Jackson. Covich and Simpson are actually still part of the  
3       Jackson metropolitan statistical area. The districts that  
4       I've drawn includes Covich and Simpson, and also part of  
5       Lincoln County as well as Jefferson Davis County. That's  
6       on the right side.

7               On the left side, you can see what it looks like  
8       under the 2022 plan where there is no majority-Black  
9       district. And you see that Covich County is split and  
10      Lawrence County is split. And I don't have the actual  
11      Black population percentage in front of me, but it's not a  
12      district that would be performing for a Black candidate, I  
13      don't believe. But I'm not the *Gingles* 2 or 3 expert, so I  
14      will go no further with that.

15      Q.       Let's focus on the district that you drew. Tell us  
16      about the additional Black-majority district that you  
17      configured in this area?

18      A.       Well, I took a look and noticed it would not be  
19      difficult to include all of Covich County but split Simpson  
20      County and also include Jefferson Davis County, as the  
21      state has done in their plan, and in addition, add in a  
22      part of Lincoln County that extends from Brookhaven back up  
23      to the Covich County line.

24      Q.       Mr. Cooper, did you consider connections between  
25      communities when you were configuring this district?

1 A. Yes. I was working at the precinct level in general  
2 I think. I'm not sure -- I don't think I split any  
3 precincts. It's in the exhibits if I did. I don't have a  
4 photographic memory on stuff like this. But, yeah, I was  
5 aware that -- that one could get from, say, Wesson down to  
6 Brookhaven via Highway 51 right through the middle of the  
7 area that I identified had a significant Black population.

8 I'm also aware of the fact that the Lincoln County  
9 is actually part of what is known as a combined statistical  
10 area identified by the Census Bureau as being not part of  
11 the Jackson MSA, but an area that as a result of commuting  
12 patterns, would kind of fit into the Jackson MSA. Unlike  
13 Lawrence County, which is not part of that combined  
14 statistical area.

15 Q. And, Mr. Cooper, in your opinion, is illustrative  
16 Senate District 35 sufficiently compact?

17 A. I believe so. Compactness scores are the same or  
18 better, right, compared to the 2022 plan. I don't have it  
19 in my head, but it's in the -- I'm almost sure they're the  
20 same or better.

21 Q. And, Mr. Cooper, let's move on to one more Senate  
22 District. You also identify in your report what you call a  
23 Hypothetical Minority Opportunity Senate District. I'm  
24 putting it on the screen now. This is from page 53 of your  
25 report. And first of all, just what is the area we're

1 looking at here?

2 A. Well, we're looking at part of Harrison County,  
3 specifically, the city of Gulfport, and you can see Long  
4 Beach down there. You can see there are Senate Districts  
5 that kind of go into the city: 49, 48. If we looked at a  
6 House map covering the same area, you would see there are  
7 two majority-Black House Districts in Gulfport.

8 And so when I looked at it, I considered, well, as  
9 drawn, there's no district in or around Gulfport at the  
10 Senate level that has more than 30 percent or so Black  
11 population. So it was clear to me that you just combine  
12 the existing House districts that are there, add in four  
13 precincts, and bingo; you've got a Senate District that's  
14 in the low 40s Black voting-age population, not a majority.  
15 And it's not part of the illustrative plan that I've drawn,  
16 which is for *Gingles* 1 purposes. But this is one that I  
17 think has a constitutional challenge, and I was asked to  
18 produce it or see what I could do in that area. And this  
19 was the result. I believe Dr. Ragusa will have more to say  
20 about this. I don't know.

21 Q. Just focusing on what you did --

22 A. Yeah, I have no connection to Dr. Ragusa. I'm not  
23 even sure if I'm pronouncing his name right.

24 Q. Indeed. When you drew this hypothetical district --  
25 I believe you started to describe it, but you said you

1 combined two House Districts?

2 A. Yes.

3 Q. And you mentioned it was one of them or both of  
4 them?

5 A. Both of them are in Gulfport or -- or the vicinity.

6 Q. Mr. Cooper, how does your -- and just to be clear,  
7 the hypothetical district you're talking about is this red  
8 line that we're looking at?

9 A. Yes.

10 Q. Now, how does your configuration of the Gulfport  
11 area compare with the 2022 plan in the Senate in terms of  
12 traditional districting principles?

13 A. Well, it has fewer county splits. I believe it has  
14 fewer VTD splits and it would split -- I believe it would  
15 split Gulfport three ways instead of four, or maybe it's  
16 two instead of three. I can't recall, but it -- it  
17 performs better on splits.

18 I did not include a table of metrics with this  
19 particular hypothetical plan, partly not to confuse things.  
20 But that information is in an exhibit identifying the  
21 number of precinct splits and the municipal splits. I  
22 think I used a cluster of maybe a couple of counties to do  
23 that.

24 Q. And I believe in your report, those are exhibits Z1  
25 and Z2?

1 A. That would sound about right.

2 Q. And, Mr. Cooper, let's talk about your illustrative  
3 House Plan. Moving on to the next slide. Again, we're  
4 looking at a map with the 2022 plan on the left, the  
5 illustrative plan on the right, and a red boundary showing  
6 both the area of the additional majority Black district.  
7 Would you tell me about the area we're looking at here?

8 A. Yes, we're looking basically at Chickasaw County,  
9 and parts of Monroe County and Clay County. And what I  
10 attempted to do here was to shift existing House majority  
11 district 22 further north and shift existing House  
12 District -- is that -- 36 further south and in doing so, I  
13 could create a brand-new additional majority Black district  
14 that would only be in Chickasaw County and Monroe County,  
15 and that is what would be new majority Black 22.

16 Q. And how does this area compare to the area that we  
17 were talking about with respect to your illustrative Senate  
18 District 17?

19 A. It covers much of the southern portion of existing  
20 or illustrative Senate District 17.

21 Q. And focusing on the left side, that 2022 plan for a  
22 moment. I see in your report that you say that the 2022  
23 plan, cracks Black population in the midsection of  
24 Chickasaw and Monroe Counties. What do you mean by that?

25 A. Well, you can see that Chickasaw County, which is

1     about 45 percent Black, and Monroe County has a lower  
2     percentage than Chickasaw, but both of those districts are  
3     majority white and they could be areas that would be in an  
4     additional House seat that would be majority Black.

5             And it would join eastern Chickasaw County with --  
6     with Monroe and -- and the city of Okolona in the north  
7     would also be in that district which has a significant  
8     Black population.

9     Q.       Now, Mr. Cooper, how would you describe the way that  
10    the enacted '22 plan treats county boundaries?

11    A.       It has more splits for sure. You can see that House  
12    District 36 goes in to both Monroe and Chickasaw. I  
13    eliminated that so that now House District 36 is in --  
14    entirely in Clay and areas further south, and the same  
15    holds true for majority Black 22, which I've shifted  
16    further north allowing for all of Chickasaw and -- or most  
17    of Chickasaw, I should say and part of Monroe to go into a  
18    majority Black House District.

19    Q.       And you say majority Black 22, I believe is that  
20    District 16 in the pink there on the left side?

21    A.       I'm sorry?

22    Q.       Just looking on the left side for a second, the pink  
23    district.

24    A.       Oh, that would be 16. Yeah, that's right.

25    Q.       And let's focus on your illustrative House District



1 22 for a second. Is this district compact in your opinion?

2 A. Yes. Yeah, I'm following county lines to the south  
3 as you go up the east side. I'm following the  
4 Tennessee-Tombigbee for most of the distance and then at  
5 the very end, I think, I'm following precincts as it winds  
6 back towards Okolona.

7 Q. And Mr. Cooper, let's talk about the next district.  
8 Page 819, 921 from your report. Same configuration of '22  
9 illustrative plan being shown here on the screen. Tell us  
10 about the area we're looking at now.

11 A. We're looking at an area that's not too far from  
12 here. In fact, it might even be on the map. It's the  
13 western part of Jackson and extending up in to Madison  
14 County at the top of the -- of the page, and you can see  
15 that the plan -- the district that I've suggested, House  
16 District 56 would bring in neighborhoods in the western  
17 part of Jackson and join them with parts of Clinton to  
18 create an extremely compact district.

19 It couldn't be more than ten or 15 miles from one  
20 end to the other and it would be a majority Black district  
21 as opposed to the existing majority Black district -- I  
22 mean as opposed to the current House District 56 which  
23 extends in to Clinton and then goes way north and it's  
24 majority white.

25 Q. And the district you're just describing from the

1 2022 plan, is that the pink district 56 that's extending  
2 north?

3 A. Yes.

4 Q. You're saying it extends even further north?

5 A. Yes, you'd have to look at a zoomed out map to  
6 really see the full extension.

7 Q. And we can actually look at that, and go to PTX001,  
8 page 571. And zoom in right in the center of that image  
9 there.

10 A. Yes.

11 Q. And is that the pink district you're referring to?

12 A. Yes, it goes up deep in to Madison County picking up  
13 Flora and some other places as well.

14 Q. Let's go back to the slide deck and move ahead. Now  
15 Mr. Cooper, you mentioned compactness already. Any other  
16 traditional districting principles that you were -- that  
17 were top of mind in term of your considerations for drawing  
18 this district?

19 A. I think it reduces VTD and county splits. I'd have  
20 to go back and look at the exhibits but the intention was  
21 to follow in this case, it was very easy to follow the  
22 interstate for much of the distance in the south end and  
23 major thorough fairs further north in part of Clinton.

24 Q. Let's move on to the last of the illustrative House  
25 Districts. Page 815, 817 from plaintiffs' 1, your report.

1 Tell us, first of all, what's the general area we're  
2 looking at here?

3 A. Well, this is the East Central Planning District  
4 area that includes counties like Jasper, and Newton, and  
5 Clarke. It's the area that's had a tiny population growth  
6 of the Black population over the last years but a big loss  
7 in the white population, so it seems to be -- seems to me  
8 to be an area you could create an additional majority Black  
9 district.

10 I'm sorry.

11 Q. Moving ahead one slide and focusing on the  
12 illustrative House District that you drew, majority Black  
13 district that you drew, what are some of the principles you  
14 consider in configuring this district?

15 A. I was working with old precincts and tried to  
16 minimize the county splits so --

17 Q. And --

18 A. -- this is the result.

19 Q. And in your opinion, is this a compact district?

20 A. Yes.

21 Q. Now, let's finish off the discussion of some of the  
22 districts you drew by focusing on some additional -- some  
23 hypothetical minority opportunity districts in the House  
24 Plan and we can go to the next slide.

25 So first looking at page 77 of your report. You

1 drew what you describe as two hypothetical minority  
2 opportunity districts in the area around Grenada which you  
3 call 34 and 36. First, just to be clear, these are not  
4 part of the illustrative *Gingles* 1 plan, right?

5 A. Right.

6 Q. Tell us what you were doing here?

7 A. Well, I was trying to draw two districts that were  
8 regularly shaped and had fewer municipal splits and fewer  
9 county splits. You can see the colors are kind of  
10 overwhelming on this map but there are ways to draw a  
11 District 36 and 34 that are much more regularly shaped.

12 Q. And moving on, in the next slide, let's look at  
13 again the Jackson area. This is from page 78 of your  
14 report what you term hypothetical House District 64. Tell  
15 us about the area that we're looking at and about the  
16 hypothetical district you configure here.

17 A. Okay. Well, this is in eastern Hinds County right  
18 along the Madison County line, and you can see that -- and  
19 the hypothetical district is the bright red line  
20 overlaying, of course, the 2022 House -- and you can see  
21 how existing 64 starts further south than the hypothetical  
22 district that I've drawn.

23 Goes way up into Madison County in a very odd way  
24 and I was able to create a district that has a more regular  
25 shape to it, following at least in the western boundary of

1 the interstate and the county line to the north between  
2 Hinds and Madison Counties.

3 Q. And how does the -- your configuration of the plan  
4 compare -- or how does your configuration of this  
5 hypothetical House District 64 compare to the enacted plan  
6 with respect to traditional districting?

7 A. Oh, it's superior because it's much more compact,  
8 much more regularly shaped. I don't have the compactness  
9 scores for House 64 at my disposal immediately but just  
10 looking at it -- you don't need to look at the compactness  
11 score. You can see it has a very odd shape.

12 JUDGE JORDAN: I'm sorry. House District 64 from  
13 the 2022 plan is where?

14 A. It's the pink district and the red line is the  
15 hypothetical district that I've drawn overlaying the 2022  
16 plan.

17 JUDGE JORDAN: Which shade of pink?

18 A. Oh. Well, you know, I think that House District 59  
19 would be more of a rose color but I'm not an artist. I --  
20 it's -- the reason why the pink changes colors is because  
21 I've shaded the boundaries for the municipalities in the  
22 state in these maps and because we're in Jackson -- or  
23 close to it, most of that area is shaded so it does take on  
24 a different color of pink until you get on the Madison  
25 County line before it gets in to Ridgeland. It's a

1 brighter pink, if that helps. Does that help?

2 MR. SAVITZKY: Mr. Cooper. If I may.

3 JUDGE JORDAN: It doesn't. I'm sorry. Go ahead and  
4 see if you can --

5 BY MR. SAVITZKY:

6 Q. Mr. Cooper, looking at this map, it appears that  
7 there's a brighter, what you call, rose color district 59  
8 and a sort of duller pink color 64 which --

9 JUDGE JORDAN: That's what I'm getting at. There's  
10 a big 64 right in the middle. Is that his new number or  
11 the existing number?

12 A. It's both actually, I think. But in my -- in this  
13 hypothetical district, 64 is this red line. This thick red  
14 line.

15 JUDGE JORDAN: Right. I understand that.

16 A. Yeah, but enacted 64 crosses the county line in to  
17 Madison and then kind of winds it's way up to --

18 JUDGE JORDAN: All right. I'm clear. I only saw  
19 one 64 on the map and that's why I'm trying to find the  
20 original 64 but you're telling me there's only one. You  
21 used 64 twice here for the same -- for the old and the new?

22 A. Yeah.

23 JUDGE JORDAN: Okay.

24 A. And the color, again, kind of a pink has over --  
25 shading indicating municipal areas would be the 2022 House,

1 and the red lines that are out -- that you see would be a  
2 hypothetical 64 that would have a Black population that is  
3 somewhere in the 40s compared to existing 64, which is  
4 somewhere in the low 30s, I believe.

5 JUDGE SOUTHWICK: If I may ask a continuation of  
6 that. When you go north of the county line, the 64 you're  
7 representing, you go up in to Madison. How much of those  
8 different shades of purple and pink are the Senate  
9 District? It changes color. You said yours is more  
10 compact. Is it just that first pink right above the county  
11 line?

12 A. Well, the existing plan, the pink area, it is in  
13 that pink area just above the county line. The reason why  
14 the colors are changing -- maybe it confuses things -- but  
15 the shading, this kind of gray shading overlaying the  
16 colors represents areas that are part of a municipality.

17 You can see if you go out further to the north  
18 east -- or north west in Madison County, that turquoise  
19 blue becomes much more apparent because it's not part of  
20 Ridgeland. It's a rural area, not in an incorporated.

21 JUDGE SOUTHWICK: Does District 64 extend all the  
22 way east of your number 58?

23 A. Yes. It goes all the way up there.

24 JUDGE SOUTHWICK: That's all I needed to know.

25 A. You're seeing the full extent of 64 under the

1 enacted plan.

2 JUDGE JORDAN: It may be helpful to us. You can  
3 tell us straight. For example, I think what you're telling  
4 us 64 runs up.

5 A. Exactly.

6 JUDGE JORDAN: Like that? It's all this lavender  
7 color.

8 A. Yes, that's it.

9 JUDGE JORDAN: You can erase that on your end.

10 JUDGE SOUTHWICK: Good work.

11 BY MR. SAVITZKY:

12 Q. Lavender and rose are more descriptive terms for the  
13 colors here than pink. All right.

14 Mr. Cooper, that's the last House District. I think  
15 we should sum up and we can go to the next slide.

16 Did you form an opinion on whether the Black  
17 population is sufficiently numerous and compact to comprise  
18 a voting age majority additional state House and state  
19 Senate District?

20 A. Yes.

21 Q. What's your opinion?

22 A. My opinion is that, at a minimum, four additional  
23 majority Black Senate Districts can be drawn that adhere to  
24 traditional redistricting principles and meet the *Gingles* 1  
25 inquiry, and three additional House Districts can be drawn



1     that are over 50 percent plus one Black and are drawn to  
2     adhere to the traditional redistricting principles.

3     Q.       And Mr. Cooper, do your illustrative plans  
4     illustrate those districts?

5     A.       I believe they do. Those are not necessarily the  
6     only way to do it but one good example for the Senate and  
7     one good example for the House.

8     Q.       All right. And you mentioned this already but just  
9     to confirm one more time. Did you adhere to traditional  
10    districting principles in drawing the illustrative plans?

11    A.       Yes, I did.

12    Q.       And Mr. Cooper, based on all your experience and in  
13    your opinion, are your additional Black majority Black  
14    districts in the Senate and House Plans reasonably  
15    configured?

16    A.       They are reasonably configured.

17    Q.       Mr. Cooper, in your view, did considerations of race  
18    predominate over other principles in constructing these  
19    plans?

20    A.       No, I was balancing all factors. I was aware of  
21    race but I was balancing all of the redistricting  
22    principles, including some things that may be in the  
23    background, like, where I believe incumbents live and  
24    certainly changes could be made to take into account that  
25    and I believe you could still get the same number of

1 majority Black -- new majority Black House and Senate  
2 Districts.

3 Q. And Mr. Cooper, if the Court ultimately found that  
4 there was vote dilution in the areas that we've been  
5 focused about today, could your plans be put in to effect  
6 to address and ameliorate vote dilution?

7 A. I believe so. They do not split as many VTDs or as  
8 many counties, so it would be simpler to administer, I  
9 would think.

10 MR. SAVITZKY: I have no further questions for  
11 Mr. Cooper at this time.

12 JUDGE JORDAN: All right. Thank you. Cross?

13 MR. CARDIN: May it please the Court?

14 JUDGE JORDAN: Yes, sir.

15 **CROSS-EXAMINATION**

16 **BY MR. CARDIN:**

17 Q. Mr. Cooper, my name is Tommie Cardin. And you and I  
18 have had the pleasure of meeting before, haven't we?

19 A. Yes, we have.

20 Q. It's nice to see you again.

21 A. Nice to see you.

22 Q. I want to start, Mr. Cooper, with your testimony of  
23 your use of the planning and development district  
24 boundaries. And you decided on your own to use the PDD  
25 boundaries in developing your illustrative plans, didn't

1     you?

2     A.       I did.   In order to describe various parts of the  
3     state, that seemed like a very rational decision on my  
4     part.

5     Q.       And the PDDs, they are not public civil divisions  
6     for which the Census Bureau actually reports census  
7     population data, are they?

8     A.       Well, they don't separate it out like they would say  
9     MSAs, metropolitan statistical areas, but you can readily  
10    calculate what the population count is in those areas  
11    because they involve whole counties.   So that's what I've  
12    done in this case and you can also -- as I've done -- look  
13    at the socioeconomic data because the PDs are built off of  
14    whole counties.   Actually derived some comparisons by  
15    planning district based on socioeconomic wellbeing.

16    Q.       That's right.   As a matter of fact, you have to  
17    reaggregate the population among the counties in the PDDs  
18    to arrive at a total population figure for the PDDs, don't  
19    you?

20    A.       That's true.

21    Q.       Right.   And that's because the Census Bureau reports  
22    population data at the county level; correct?

23    A.       Right.

24    Q.       Okay.   And now, I believe that you would agree with  
25    me that the PDDs are actually Mississippi private nonprofit

1 corporations, aren't they?

2 A. I understand they're 501 C-3s, right, but they're a  
3 special breed of 501 C-3s. They involve local leaders  
4 working on different projects that would benefit not just  
5 one county but several counties across the board in terms  
6 of things that a region can do to enhance economic  
7 activity.

8 I've mentioned, I think I've seen one of the  
9 planning districts operates an agency on aging. So there's  
10 so many different things that each planning district can do  
11 to foster community wellbeing that goes beyond county  
12 lines, so I don't really understand why you don't like  
13 planning district. They're a good idea, I think.

14 Q. Well, Mr. Cooper, I haven't said I don't like them.

15 A. Well, you don't like me using them. And I am not  
16 using them --

17 Q. I am just ask you about them, Mr. Cooper.

18 JUDGE JORDAN: Gentlemen, we have to go one at a  
19 time.

20 BY MR. CARDIN:

21 Q. Along those lines, if we might pull up, then,  
22 Exhibit DX16. It's been introduced into evidence.

23 And so I would direct your attention, Mr. Cooper,  
24 you see that on the screen. This is the copy of the  
25 articles of incorporation for the central Mississippi

1 planning and development district. And at the very  
2 beginning there, the very beginning paragraph, if you could  
3 read that for me.

4 Back up. There you go.

5 A. Central Mississippi Planning and Development  
6 District Inc. is a voluntary nonprofit corporation  
7 chartered by the state of Mississippi.

8 Q. All right. Thank you, Mr. Cooper. And I would  
9 represent to you that there are also the similar articles  
10 of incorporation that are included in this that cover the  
11 five PDDs you considered. You didn't consider all ten  
12 PDDs, did you?

13 A. Oh, yes, I did but then I honed in on those PDDs  
14 where there has been significant Black population growth  
15 but certainly, I had all ten -- all ten PDDs on screen and  
16 was aware of where they are, and it was just a very  
17 convenient way to organize the state in to regions as I was  
18 drawing the plan but it's not absolutely essential. I  
19 mean, I believe the *Gingles* 1 is answered even if you  
20 eliminate PDDs altogether and just ignore that they even  
21 exist but, you know, PDDs are --

22 Q. But your report doesn't indicate that, does it,  
23 Mr. Cooper? Your report indicates you used PDDs and you  
24 relied on those to develop your plans; correct?

25 A. I used them as a way to provide a -- a framework for

1 taking in to account the different regions of the state  
2 because the northeast part of the state is very different  
3 from Gulfport, wouldn't you say?

4 So it makes sense to have regions in the state and I  
5 wanted to cover the whole state when I did that regional  
6 framework and planning districts are perfect. You can't  
7 use MSAs or even MPSAs because they are regions, but they  
8 don't encompass the whole state. Rural areas aren't part  
9 of that.

10 Q. We'll get to this in a minute but you used MSAs and  
11 MPSAs, didn't you?

12 A. I was aware of them, right.

13 Q. Okay. Now, I want to direct your attention,  
14 Mr. Cooper, to an exhibit that has been stipulated into  
15 evidence as a joint pretrial order Appendix A, stipulation  
16 55. I want to represent to you, Mr. Cooper, that what  
17 follows there is part of stipulation 55 is the actual  
18 statute, the Mississippi statute which provides the  
19 apportionment, guidelines, and standards for the  
20 legislature to follow in redistricting. You've reviewed  
21 this statute before, haven't you?

22 A. I think I did early on.

23 Q. And now, in reviewing that statute here today, it  
24 does not mention PDD boundaries in that statute, does it?

25 A. No, it doesn't and that's okay. I don't -- again, I

1 don't understand the problem with considering PDDs as a way  
2 to describe regions in the state. I could have -- there's  
3 a map on Senator Hyde's website that divides the state in  
4 to eight regions that wouldn't be all that different from  
5 the ten I've shown via the PDDs.

6 Q. Now, that raises a good point. You could've chosen  
7 those regions, couldn't you?

8 A. And I would've come out with the same result,  
9 basically.

10 Q. Well, you might or you might not. The point is you  
11 made the decision to choose those boundaries to identify  
12 certain regions, didn't you?

13 A. I did but I'm also stressing that I could have  
14 identified the regions in a more morphous manner and still  
15 drawn the exact same districts.

16 Q. But you did treat the PDDs as regional communities  
17 of interest, didn't you?

18 A. Well, yes and on that, I hold fast. That is a clear  
19 community of interest without argument. Yeah, the -- the  
20 Three Rivers PDD, I realize, it's a 501 C-3 but if you look  
21 at their website, you'll find at the end a listing of all  
22 the board members and other important agencies in the  
23 county, and then they have a list of all the legislators  
24 that represent the county.

25 Now the Tupelo YMCA isn't going to put the

1 legislators on there, obviously, so I mean, it's a broad  
2 based community of interest that goes beyond one small  
3 group in Tupelo maybe associated with the YMCA.

4 Q. But you can acknowledge that the state of  
5 Mississippi does not confine community of interest for  
6 purposes of redistricting, does it?

7 A. I don't believe it does and it's not easily defined  
8 frankly.

9 Q. I think you indicated that in your report  
10 specifically, didn't you?

11 A. What?

12 Q. That the state of Mississippi does not define  
13 community of interest.

14 A. I may have. I don't recall.

15 Q. I would direct your attention to footnote 15 of your  
16 report but --

17 A. I believe you.

18 Q. Now as you went about developing your illustrative  
19 plans, you focused on planning districts that had  
20 substantial Black population that had experienced double  
21 digit Black population growth since 2000; correct?

22 A. Correct.

23 Q. And then conversely areas with stable Black  
24 population where there's been a double digit decline in the  
25 white population since 2000; correct?



1 A. Right. We don't have to say -- I focus on regions  
2 and areas. You can eliminate the concept of planning  
3 districts and still come up with something similar.

4 Q. Okay. And so your focus then was on the planning  
5 and development district areas where you felt it was likely  
6 you could develop additional majority Black districts;  
7 correct?

8 A. Yes.

9 Q. Now, I believe you testified that you -- in  
10 developing your illustrative plans, you built them using  
11 precincts, didn't you?

12 A. By and large, although sometimes it was necessary to  
13 split precincts to follow municipal line in lieu of a  
14 precinct, or sometimes it was necessary to get down to the  
15 block level to try to avoid pairing incumbents.

16 Q. Right. And I believe you testified that you used  
17 Maptitude software, did you not?

18 A. I did.

19 Q. And you used a feature on Maptitude that would put  
20 little dots over precincts that had 30 percent more Black  
21 voting age population; is that correct?

22 A. 30 percent or more. In other words, precincts that  
23 are in the range of 25, 30, 25 percent are racially diverse  
24 so it would make sense to add some of those areas in to  
25 what would be a majority Black district.

1 Q. And so that -- that shows, those dots would show  
2 where concentrations of Black population are in the  
3 different areas; correct?

4 A. Yes.

5 Q. Now, Mr. Cooper you testified a good bit about your  
6 use of trading redistricting principles and you set forth  
7 several of those that you considered to be traditional  
8 redistricting principles. I think you mentioned county  
9 splits; correct?

10 A. Right. It's a good way to quantify community of  
11 interest. The county -- to the extent, you should try to  
12 keep counties whole.

13 Q. Okay. Municipal boundaries?

14 A. Same deal.

15 Q. Same deal.

16 A. Way to quantify a community of interest which would  
17 be a municipal in and of itself.

18 Q. Same way with precincts?

19 A. Yes but to a lesser extent because precincts are  
20 ever changing and people do have a certain preference for  
21 their usual polling place but, you know, there's sort of a  
22 trade off between the polling place and a precinct boundary  
23 versus the municipality itself.

24 Q. And the -- I believe that you testified to that  
25 precincts are also known as VTDs, that's voter tabulation

1 districts; is that correct?

2 A. Yes, that's a Census Bureau term and what they do at  
3 the -- what the decennial census gets information from the  
4 state of Mississippi about the existing precinct lines and  
5 then try to follow those lines provided they follow what  
6 would be the 2022 census blocks, and those lines would  
7 represent what are called voting tabulation districts.

8 And over the course of the decade, the precinct  
9 boundaries in Mississippi obviously will change as a result  
10 of local redistricting or some other state redistricting  
11 like the congressional plan, that sort of thing.

12 Q. So I believe you also testified you made a  
13 comparison of other splits that you measured that you used  
14 as metrics; correct?

15 A. Yes.

16 Q. And that was school districts?

17 A. Right.

18 Q. Planning and Development Districts?

19 A. (Nods head affirmatively).

20 Q. Metropolitan statistical areas?

21 A. Yes.

22 Q. Micropolitan statistical areas?

23 A. Right.

24 Q. So that's four additional metrics in terms of splits  
25 that you've added to what's set forth in the statute;

1 correct?

2 A. Yes, I need to look at the statute again. The  
3 statute, I believe, talks about counties and doesn't it  
4 talk about municipalities?

5 Q. Well, let's go look and see.

6 A. I mean, it doesn't -- those are traditional  
7 redistricting principles.

8 Q. Yeah.

9 A. There's no requirement that you not go beyond what  
10 the legislature set forth in this -- in this legislation.

11 Q. Right. And I believe you testified, Mr. Cooper,  
12 that you really had to balance a lot of different  
13 interests, didn't you?

14 A. Yes, you did.

15 Q. And so by introducing this additional criteria,  
16 that's just that many more sets of boundaries that you've  
17 got to try to balance among everything else you're doing;  
18 correct?

19 A. Well, that's correct. That's correct.

20 Q. And you would agree with me that it's hard enough to  
21 balance all of these criteria when you're doing this on  
22 your own as opposed to when you're trying to do it in a  
23 legislative body of 122 people?

24 A. Well, there would be some people who would have  
25 their own thoughts about how the plans should be drawn.

1 That's for sure.

2 Q. And probably 122 different thoughts, wouldn't it?

3 A. Maybe.

4 Q. And in the Senate, 52 people would have 52 different  
5 ideas as well?

6 A. Right but the bottom line is you have to meet one  
7 person, one vote. You cannot dilute the minority -- the  
8 minority voting strength, and these guidelines themselves  
9 show that the districts should be reasonably compact and  
10 shall cross governmental political boundaries the least  
11 number of times possible. That's an interesting  
12 requirement.

13 Q. It is an interesting requirement. Now I think  
14 you've emphasized and you would agree with me that the one  
15 person, one vote requirement is very important, isn't it?

16 A. Well, yes. It's -- it's almost cast in stone.  
17 There may be occasional instances where you would go beyond  
18 that for one reason or other, like if there's a mountain  
19 range but there's no mountain range in Mississippi that  
20 would get in the way of drawing plus or minus five percent  
21 districts.

22 Q. And you are aware of the criteria -- the criteria  
23 adopted by the Standing Joint Committee and that was one of  
24 the criteria that they had, wasn't it?

25 A. Yes.

1 Q. The plus or minus five percent?

2 A. Right.

3 Q. So let's just stop here, Mr. Cooper. Let --  
4 describe for us then exactly what you mean by plus or minus  
5 five percent deviation. What -- what -- just describe that  
6 for us in simple terms?

7 A. Well, you have the ideal population size in  
8 Mississippi of a House District, which is 24,000, so you  
9 can't go beyond 5 percent of 24,000 to the up side or the  
10 down side.

11 Q. Right. Five percent above or below whatever the  
12 ideal district size is; correct?

13 A. Right.

14 Q. Okay. And I think you commend the legislature for  
15 adopting that standard, didn't -- don't you?

16 A. I do because some states have like plus or minus one  
17 percent which forces splits of municipalities and  
18 precincts, and it just seems to be so unnecessary so I do.  
19 I applaud Mississippi for plus or minus five percent.

20 Q. And you believe that was a wise decision on the  
21 legislature's part?

22 A. I do.

23 Q. And now it's -- as you just said though earlier, I  
24 believe, it's inevitable that you're going to have to split  
25 some areas, some cities, some counties, some precincts

1 simply because of all the interests you're trying to  
2 balance; correct?

3 A. Absolutely, and I split a number of counties, and a  
4 number of VTDs, and a number of municipalities but I also  
5 managed to create five additional Senate districts that are  
6 majority Black -- excuse me -- four and three additional  
7 majority Black House districts.

8 Q. And there can be a variety of reasons that a  
9 governing body would split boundaries or precincts, can't  
10 there?

11 A. Sure.

12 Q. As a matter of fact, I think you've drawn plans for  
13 governing bodies yourself before haven't you?

14 A. Yes.

15 Q. And have you ever had an incumbent come to you and  
16 express preferences on what kind of territory he or she  
17 might want in his or her district?

18 A. I have.

19 Q. And when that happens, what do you try to do?

20 A. I will try to consider that and -- and maybe make a  
21 change to a plan. I would not consider it though if it  
22 diluted minority voting strength.

23 Q. Right. And it's -- it's nice, though, to be able to  
24 draw a plan without having to take those considerations in  
25 to play, isn't it?

1 A. Well, you mean a consideration like the non-dilution  
2 of minority voting strength?

3 Q. No, Mr. Cooper. Having to satisfy incumbents and  
4 their preferences?

5 A. Well, it's not as traumatic as it would be for  
6 somebody sitting over in the legislature.

7 Q. Sure.

8 A. Right. But that's their job.

9 Q. Along those lines -- indeed it is, Mr. Cooper.  
10 Along those lines, I'd like for us to talk about what the  
11 legislature actually considered in drawing its plans.

12 MR. CARDIN: And at this time, Your Honor, I'd like  
13 to ask that what's been premarked as Exhibit DX76, which is  
14 the video of the floor debate of the House -- I mean, the  
15 Senate. It's the Senate floor debate. There's a House  
16 floor debate, too. But this is DX76 and it's the video of  
17 the Senate floor presentation which I would like to bring  
18 up and play.

19 And, Your Honor, for purposes of timing, this is  
20 about 13 minutes and if the Court is thinking about in  
21 terms of when you want to take a break, I just raise that  
22 because it's about -- that's about how long it is.

23 JUDGE JORDAN: All right. We might want to take a  
24 break after that.

25 MR. CARDIN: Okay.



1 JUDGE JORDAN: Is there an objection to -- I'm  
2 sorry. You said 76?

3 MR. CARDIN: Yes, Your Honor. DX76.

4 MR. SAVITZKY: Your Honor, I believe the transcripts  
5 of these floor debates and presentations are already in  
6 evidence so the presentation and the video may be somewhat  
7 cumulative but we certainly -- I think our main objection  
8 would be it's cumulative and the Court can refer to the  
9 transcript and there are provisions of the transcript to  
10 which Mr. Cardin wants to direct Mr. Cooper, that would be  
11 a more efficient use of the Court's time.

12 JUDGE JORDAN: All right. Just one second.

13 All right. Objection's overruled. You can -- DX76  
14 will be admitted. I think that while we may have a  
15 transcript, the transcript doesn't reflect tone so it's not  
16 strictly cumulative in that sense so you may proceed.

17 MR. CARDIN: Thank you, Your Honor. Okay. Brent,  
18 do you want to bring it up?

19 (Defendants' Exhibit 76 entered.)

20 (Video playing in open court.)

21 BY MR. CARDIN:

22 Q. All right. Thank you, Brent.

23 So Mr. Cooper, you just saw the video presentation  
24 of the presentation that Senator Kirby made in the Senate  
25 for the Senate Plan. And in that, he indicated there had

1     been significant population shifts in the state; correct?

2     A.       Correct.

3     Q.       Yeah. And there had been -- and as a result of  
4     those population shifts, they had to move or collapse a  
5     district in south west Mississippi and move it, didn't  
6     they?

7     A.       He did say that.

8     Q.       Okay. That district that they collapsed, Senate  
9     District 36, you wouldn't happen to know whether it elected  
10    a Republican or Democrat, would you?

11    A.       I would not.

12    Q.       And as a result, this resulted in the only incumbent  
13    pairing in the Senate Plan according to Senator Kirby;  
14    correct?

15    A.       Correct.

16    Q.       And Senator Kirby also indicated that the  
17    legislature maintained districts 37 and 38 in that area in  
18    an effort to try to comply with Section 2 of the Voting  
19    Rights Act; correct?

20    A.       I think he said something to that effect.

21    Q.       And he talked about the importance of trying to  
22    comply with Section 2 of the Voting Rights Acts, didn't he?

23    A.       He did.

24    Q.       And he also talked about traditional redistricting  
25    principles, such as compactness and county and precinct

1 splits and then he mentioned political performance at the  
2 end, didn't he?

3 A. He did say political performance.

4 Q. Okay. I'd like to now look at -- let's look at the  
5 map the Senate actually adopted as a result of that debate,  
6 if we could.

7 MR. CARDIN: Could we pull that up? That should  
8 be -- it's been introduced into evidence, Your Honor, as  
9 JTX47 if you could pull this up.

10 JUDGE JORDAN: If this is going to start a new line  
11 of questioning, it might be a good time for a break.

12 MR. CARDIN: It would be a great time for a break,  
13 Your Honor.

14 JUDGE JORDAN: Okay. Let's see. Let's come back at  
15 3:25. Court's in recess.

16 (A brief recess was taken.)

17 JUDGE JORDAN: Thank you. You may be seated.

18 MR. CARDIN: May it please the Court, Your Honor?

19 JUDGE JORDAN: Yes, sir. Thank you.

20 BY MR. CARDIN:

21 Q. Okay. Let's see. Mr. Cooper, I think we've -- when  
22 we left off for the break, I wanted to pull up the actual  
23 Senate map that the Senate adopted during that floor debate  
24 that we just watched. And that map is now on the screen  
25 and I want to represent to you it looks like we've zoomed

1 in on the DeSoto County area.

2 Do you see that?

3 A. Yes.

4 Q. You're generally familiar with that area having  
5 drawn your map; correct?

6 A. Yes.

7 Q. Now, I want to point out to you on this map,  
8 Mr. Cooper, I represent to you that it looks like that  
9 there are precincts indicated on this map.

10 Do you see those precinct names?

11 A. Yes.

12 Q. And so the state map has precincts on its map but  
13 the excerpts of the illustrative districts we've seen that  
14 you testified to earlier, you didn't have precincts on  
15 those -- on your maps, did you?

16 A. I did not display the precincts on those maps but I  
17 was working with precincts as I drew the plan, and I also  
18 list which districts which precincts are in which districts  
19 so it's clear I was using precincts as I was drawing the  
20 plan.

21 Q. You were, weren't you? You were using precincts and  
22 I think you -- you provided us about 350 exhibits, didn't  
23 you?

24 A. I don't know. Those Maptitude reports --

25 Q. They do --

1 JUDGE JORDAN: Just for the record. Is this -- I  
2 assume this is J47, joint Exhibit 47?

3 MR. CARDIN: Yes, sir, Your Honor. This is JTX47.  
4 May it please the Court?

5 JUDGE JORDAN: Yes, sir.

6 BY MR. CARDIN:

7 Q. So, Mr. Cooper, and, again, none of those exhibits,  
8 none of the maps you provided ever depicted the actual  
9 precinct boundaries on a map, did they?

10 A. They did not but I could certainly produce those if  
11 need be.

12 Q. Now, on this map, we're looking at the Senate  
13 adopted, we do see the precincts. I think we also see the  
14 county lines.

15 Mr. Cooper, do you see it's those gray lines that  
16 are kind of --

17 A. Yes.

18 Q. -- dotted?

19 So looking here at DeSoto County, if I'm looking at  
20 this correctly, I see three whole Senate Districts:  
21 District 1, 2, and 19 in the DeSoto County boundaries; is  
22 that correct?

23 A. No.

24 Q. Okay. Tell me why it's not.

25 A. Because well, there's also another district,

1 District 11 that extends into the county but there are  
2 three whole precincts -- there are three whole districts.

3 Q. Right. That's what I -- that's my point. There are  
4 three whole districts contained in DeSoto County and then a  
5 partial part of the district, Senate District 11. That's  
6 also in DeSoto County; correct?

7 A. Right.

8 Q. And I believe that we've heard testimony -- I think  
9 you've indicated that there was population loss in this  
10 area. Would that have been in the area that -- what area  
11 would the population loss have been in geographically here  
12 on this map?

13 A. Certainly not DeSoto County. I think that Tunica  
14 County has held its own due to casinos. The population  
15 loss -- and I have a county by county break out of  
16 population change between 2010 and 2020 as one of my  
17 exhibit. I'm fairly certain Tate and Panola lost  
18 population but I don't have those numbers in front of me.

19 Q. Well, I tell ya, Mr. Cooper, this might be easier.

20 MR. CARDIN: Brent, if you could zoom out, so we  
21 could get a broader view of this whole region.

22 A little bit.

23 More keep on zooming out.

24 Keep on. Keep on. Okay. Okay. A little bit more.

25 All right. There we go. All right.

1 BY MR. CARDIN:

2 Q. So Mr. Cooper, let's look at -- on this map, we're  
3 looking at in DeSoto County. We've agreed there's Senate  
4 Districts 1, 2, 19, and then we have 11 which is in the  
5 orange on the western side going up from down -- it's going  
6 from DeSoto County down to Quitman County; correct?

7 A. Yes.

8 Q. Okay. And along those lines, on this Senate  
9 District 11 that the Senate drew, now if I'm looking at  
10 this map correctly, part of western DeSoto County is in  
11 Senate District 11, isn't it?

12 A. Yes, a fairly thinly populated area in DeSoto County  
13 is in District 11. It looks like maybe five precincts.

14 Q. So in this map then the Senate Districts are  
15 depicted by different colors drawn on precinct boundaries,  
16 aren't they?

17 A. Yes.

18 MR. CARDIN: Now, let's look, if we can -- Brent,  
19 let's pull up the Benchmark over under which is JTX-54,  
20 pages 13 and 14. And this has been introduced into  
21 evidence, Your Honor, as joint Exhibit 54.

22 JUDGE JORDAN: Thank you.

23 BY MR. CARDIN:

24 Q. Okay. Mr. Cooper, this is the Benchmark data for  
25 the Senate Plan in terms of the population.

1 A. Okay.

2 Q. It lists --

3 MR. CARDIN: Well, go down a little bit, Brent.

4 Just a little bit. Bring it down some. There you go.

5 You see at the top -- want to see at the top, Brent.

6 Want to see the title. Up further.

7 BY MR. CARDIN:

8 Q. Benchmark Senate summary 2020. Okay. So this is  
9 a -- and this is -- and what's your understanding of a  
10 Benchmark plan, Mr. Cooper?

11 A. Well, it would be the plan in place before a new  
12 plan would be developed based on the 2020 census. I  
13 actually have the same numbers in my declaration in an  
14 exhibit.

15 Q. Exactly. So now in regard to this. Now we saw  
16 Senate District 11 and 12 kind of south of DeSoto County  
17 coming up through the delta, didn't we?

18 A. Yes.

19 Q. And here on the Benchmark, it looks like to me --  
20 looking at the deviation column -- that Senate District 11  
21 was minus 11.92 percent which means it was underpopulated  
22 by that much; correct?

23 A. Correct.

24 Q. And then on Senate District 12, it indicates that it  
25 was underpopulated 17.99 percent, doesn't it?



1           MR. SAVITZKY: And Your Honor, just looking at, this  
2 it looks like we're talking about House Districts and not  
3 Senate Districts, so I just -- before we go any further on  
4 the record, those numbers appears to correspond to House  
5 District 11 and House District 12.

6           JUDGE JORDAN: It does --

7           MR. CARDIN: Population numbers, though, would be  
8 Senate District numbers -- it's mislabeled --

9           JUDGE JORDAN: One of your at a time.

10          MR. CARDIN: It's mislabeled, Your Honor. It's  
11 Senate Districts and actually, if you go down through --  
12 keep on going down through where it says, Senate District,  
13 those districts up there are the majority minority  
14 districts brought out of the chart and they are just put on  
15 at the beginning so you can see what the majority minority  
16 districts are and then the rest of the chart are all of  
17 those districts.

18          JUDGE JORDAN: All right. So I guess lay a  
19 foundation with this witness. What you're telling me is  
20 that first table is mislabeled House. It should say  
21 Senate?

22          MR. CARDIN: Yes. Yes.

23 BY MR. CARDIN:

24 Q.       So Mr. Cooper, you see that first column there  
25 labeled House District?

1 A. Yes.

2 Q. It should be labeled Senate District, shouldn't it?

3 A. Right.

4 Q. Thank you very much, sir.

5 All right. With regard to we've gone through 11 and  
6 12 and Senate District 13 is underpopulated by how much?

7 A. Well, 10.3 percent rounding off to the nearest  
8 tenth.

9 Q. Now, let's look at Senate District 24, Mr. Cooper.  
10 That is underpopulated as well by 10.87 percent, isn't it?

11 A. Yes.

12 Q. Now, on the flip side, we saw that there were two of  
13 the Senate Districts that were contained wholly in DeSoto  
14 County, that would have been Senate Districts 1 and 2;  
15 correct?

16 A. I think so.

17 Q. And the deviation in Senate District 1 is  
18 23.22 percent overpopulated; correct?

19 A. Yes.

20 Q. And District 2 was 7.28 percent overpopulated;  
21 correct?

22 A. Correct.

23 MR. CARDIN: Okay. All right. Let's go back,  
24 Brent, to the JTX54013 -- no. I'm sorry -- the JTX47,  
25 which was the Senate map.

1 BY MR. CARDIN:

2 Q. So looking at this Senate map, Mr. Cooper, in terms  
3 of how the Senate ended up drawing districts, would you  
4 agree with me that it looks like the Senate kind of  
5 migrated northward with Districts 11 and 13 and then --

6 A. I don't see 13 on this map.

7 Q. But it looks like they went northward with Senate  
8 District 11?

9 A. This is a 2022 Senate Plan.

10 Q. That's right. It is. And so you would agree with  
11 me that the Senate took Senate District 11 on up northward.  
12 It looks like in an effort to gain population, doesn't it?

13 A. I believe so. The Benchmark plan only went as far  
14 as Tunica. I'm not looking at the map but maybe that's  
15 true.

16 Q. That's right. And -- right. So now, what I'd like  
17 to do now, Mr. Cooper, is turn our attention to your  
18 illustrative Senate Plan which is the full map. PTX --  
19 it's plaintiffs' Exhibit 1. It's been introduced into  
20 evidence as that.

21 And that is -- that's your illustrative plan. Your  
22 statewide plan; correct?

23 A. Yes, overlaying the 2022 Senate Districts.

24 Q. Okay.

25 A. The red lines are the 2022 Senate Districts in this

1 instance.

2 Q. Good.

3 MR. CARDIN: Let's do -- okay. Brent, let's zoom in  
4 up in that DeSoto County area again.

5 BY MR. CARDIN:

6 Q. Okay. So explain to us, Mr. Cooper --

7 MR. CARDIN: And if you can, Brent, let's move this  
8 over so that this -- there we go. Thank you.

9 BY MR. CARDIN: All right. So explain to us then -- so  
10 what do these wide red lines on this map indicate?

11 A. That would be the 2022 Senate.

12 Q. That's the overlay of the 2022 Senate map, what we  
13 just looked at; correct?

14 A. I believe so. You can click it off if you don't  
15 want to look at those lines.

16 Q. Oh, sure but in terms of what we're looking at here  
17 now that's what that represents; correct?

18 A. I believe so.

19 Q. And -- and so then the shaded colors on this map,  
20 what do those represent?

21 A. Those are the illustrative districts I've drawn.  
22 For example, District 2 which is just over -- I don't have  
23 the numbers in front of me -- low 50s percent BVAP, any  
24 part Black voting-age population.

25 Q. That's right, exactly. Okay. So --

1 A. One thing I will say is that the Maptitude online  
2 does not allow you to label these districts with numbers  
3 that are with a green background as I did in the  
4 illustrative plan PDFs that are in my exhibit. You're just  
5 stuck with plain old Black labels.

6 MR. CARDIN: Okay. Let's go in a little bit closer  
7 there, Brent. Oh, right there, in DeSoto County.

8 BY MR. CARDIN:

9 Q. Okay. So we're looking there, Mr. Cooper, at --

10 MR. CARDIN: Zoom out just a little bit, Brent.  
11 There we go. Thank you.

12 BY MR. CARDIN:

13 Q. All right. So, Mr. Cooper, the county line for  
14 DeSoto County then on this map is going to be represented  
15 by, is it the broad, the wide red lines on the southern  
16 part there?

17 A. Yes, that's -- that would be, I think, the county  
18 line.

19 Q. All right. Let's do --

20 A. Yeah, it's overlaying -- it's overlaid by the  
21 enacted plan that has a district in that area -- that has a  
22 part of a district in DeSoto County.

23 Q. Mr. Cooper, I want to represent to you that I just  
24 used courtroom technology that I learned about a few  
25 minutes ago and so hopefully, this will be an aid rather

1     than a hindrance. So the -- what I've circled there in  
2     red, that's the southern boundary of DeSoto County;  
3     correct?

4     A.       I think so. I mean, you could click off the 2022  
5     Senate line and we could probably determine that.

6     Q.       Okay. But you have no reason to dispute that's  
7     the --

8     A.       I don't think so.

9     Q.       Okay. All right. And then it follows on up. It  
10    goes on up this way; correct?

11    A.       Yes.

12    Q.       And then goes across there, the county line?

13    A.       I'm not so sure about that but it might. I'd need  
14    to look at another map maybe to determine that.

15    Q.       I'll represent to you that it does, Mr. Cooper and  
16    you have no reason to dispute that, would you?

17    A.       It actually -- it would be the county line because  
18    there's Tunica Resorts so that's the county line with  
19    DeSoto further north on the other side.

20    Q.       So now it looks like to me then, Mr. Cooper, that  
21    you have changed the districts in your illustrative plan so  
22    that now there are only two districts that are wholly  
23    contained in DeSoto County rather than three; is that  
24    correct?

25    A.       No. I think I've got district -- well, District --

1 District 19 and 1 are wholly in the county and District 2  
2 is by and large in the county but it would add, I'm  
3 guessing, maybe 10,000 people from Tunica what is the  
4 county's --

5 Q. That's correct.

6 MR. CARDIN: Zoom out a little bit, Brent and get  
7 south of Hernando. Whoa. Whoa. Whoa. There you go.

8 BY MR. CARDIN:

9 Q. So it looks like to me, Mr. Cooper, what you've done  
10 in is in your redrawn Senate District 1, you've taken  
11 territory that is Hernando and Eudora and you've combined  
12 that with Tate County below; is that correct?

13 A. Yes.

14 Q. Okay. And then your Senate District 1 now basically  
15 swaps territory from Olive Branch and north of Hernando  
16 area; is that correct?

17 A. Yes, it goes in to -- you're saying Senate District  
18 1?

19 Q. Yes, sir.

20 A. Yeah, it's around Olive Branch and part of  
21 Southaven.

22 Q. That's right. I believe you testified also that  
23 part of this western part of DeSoto County that's now in  
24 your Senate District 2 was also included in the Senate  
25 District 11 under the Senate Plan; correct?

1 A. Part of it but only a small part of the city of Horn  
2 Lake. There's a little north west corner there that's in  
3 majority Black District 2 or rather District 2 or District  
4 11 in the Senate Plan whereas I've included a big chunk,  
5 most of Horn Lake in Senate District 2.

6 Q. And why did you do that?

7 A. It is an area that has a substantial minority  
8 population for one thing.

9 Q. That brings up a question, Mr. Cooper. When you're  
10 looking at the compactness for prong 1 of *Gingles*, do you  
11 look at the compactness of the minority community within  
12 the district or the compactness of the minority district as  
13 a whole?

14 A. The district as a whole.

15 Q. And so you don't look at the compactness of the  
16 minority community within the district?

17 A. I'm aware of where the minority community lives  
18 within that district and almost all of it lives in the west  
19 end of DeSoto County.

20 Q. But your measures of compactness that you provided  
21 in all of your reports are measures of compactness of the  
22 districts as a whole, not the minority communities within  
23 the district; correct?

24 A. Yeah, I've never seen a compactness measure of just  
25 the minority communities in any case I've ever been in.



1 I've never actually seen one. I've seen one that was maybe  
2 methodologically flawed but even those don't show a  
3 compactness measure but they just show a map of areas that  
4 are supposedly disparate but it's hard to say that Tunica  
5 Resorts would be a great distance from Horn Lake.

6 Q. So do you have an opinion as to whether or not the  
7 compactness should be measured of the minority community  
8 within the district or the district itself?

9 A. It's the district itself unquestionably. I know  
10 there's a group of attorneys out there that think  
11 differently, I'm not an attorney but I do not think that  
12 you need to show that the Black population is compact using  
13 some measure. If the district itself is reasonably compact  
14 then the minority community is in a reasonably compact  
15 district, just as the white population may be in a  
16 reasonably compact district but not necessarily all bunched  
17 up in one corner as some folks seem to think is necessary  
18 to have a compact district.

19 JUDGE JORDAN: Mr. Cardin, I'm going to ask because  
20 I'm a little confused. If you would clarify this for me.

21 MR. CARDIN: Yes, sir.

22 JUDGE JORDAN: But as I read the Robertson opinion  
23 and it addressed this issue. It indicated compactness  
24 is -- can be viewed in a few different ways. There's more  
25 than one component to compactness.

1 MR. CARDIN: Yes, sir.

2 JUDGE JORDAN: It can be geographic compactness. It  
3 can be other forms of compactness and so I want to make  
4 sure that you and the witness are talking about the same  
5 thing when you use the term "compactness".

6 MR. CARDIN: Thank you, Your Honor. I'll clarify  
7 that.

8 BY MR. CARDIN:

9 Q. With regard to geographic compactness, Mr. Cooper,  
10 is the opinion you stated the same?

11 A. Yes.

12 MR. CARDIN: Okay. Brent, let's zoom in now on that  
13 Southaven area --

14 JUDGE JORDAN: I'm sorry, Mr. Cooper, when he's  
15 asking you whether you're looking at the compactness of the  
16 district as a whole, how are you defining compactness?

17 A. I'm defining compactness as the district as a whole  
18 using the measures I previously discussed that are included  
19 in my exhibit, the Reock score, and the Polsby-Popper, and  
20 the convex hull. There are other measures but I truly  
21 believe that one should rely on the compactness of the  
22 district as a whole as opposed to trying to figure out some  
23 way to measure where part of the Black population lives  
24 versus another part. That's a very strange, almost  
25 nonsensical approach to drawing redistricting plans.

1 JUDGE JORDAN: Thank you.

2 MR. CARDIN: Thank you, Mr. Cooper. Your Honor, if  
3 I may?

4 JUDGE JORDAN: You may.

5 BY MR. CARDIN:

6 Q. Okay. Mr. Cooper, now, we've zoomed in on the  
7 boundaries that you've drawn in your illustrative plan  
8 between Senate Districts 2 and 1. And if I can pull this  
9 up again...

10 I'm looking at this area right here, Mr. Cooper,  
11 that I've circled in red. Okay?

12 A. Yes.

13 MR. CARDIN: And so let's zoom in a little closer,  
14 Brent.

15 BY MR. CARDIN:

16 Q. Mr. Cooper, do you see Highway 51 north on the map?

17 A. I see part of it. It gets kind of hidden behind the  
18 legend there.

19 Q. Okay. But --

20 A. You can actually -- if you move the map to the east,  
21 I guess, we'd see more of Highway 51 right in this area.

22 Q. Well, it looks like to me Highway 51 is going north  
23 run north and south, isn't it?

24 A. Yes. I guess there's two -- there's an alternate  
25 Highway 51 also.

1 Q. Yeah. So Mr. Cooper, you would agree with me -- I  
2 think you testified earlier that you tried to follow  
3 natural boundaries when you drew your plans; correct?

4 A. Well, above all, I was trying to precinct lines  
5 which often follow natural boundaries.

6 Q. Along those lines, coming down Highway 51 there, if  
7 you're coming from the north and you take that curve, and  
8 instead of continuing to go down Highway 51 north with your  
9 boundary, you take a right turn and include a notch of  
10 territory over on the western side of Highway 51, don't  
11 you?

12 A. Yes. Are you talking about District 1 and the area  
13 there that is on the west side of Highway 51?

14 Q. Yes, sir, I am. I'm talking about this right here.

15 A. I'm pretty sure it's an entire precinct.

16 Q. You're pretty sure it's what?

17 A. I'm pretty sure it's an entire precinct but I'm not  
18 looking at the precinct data, so...

19 Q. In that regard, Mr. Cooper, if I represented to you  
20 that was the Colonial Hills precinct, you would have no  
21 reason to dispute that, would you?

22 A. But I would have no reason to affirm it either.  
23 Well, I'll take you at your word, though.

24 Q. Thank you, Mr. Cooper. So do you know why you drew  
25 Colonial Hills precinct the way you did? Why you didn't

1 put it in Senate District 1 as opposed to Senate District  
2 2?

3 A. I don't know offhand. It could have had something  
4 to do with an incumbent. It could have had to do with  
5 deviation in District 1. There could have been any number  
6 of reasons why I made that decision and there probably are  
7 ways to include that precinct in District 2, if need be,  
8 and make a change elsewhere.

9 Q. Matter of fact --

10 A. These illustrative plan are not cast in stone.  
11 They're just illustrative.

12 Q. They are illustrative. And yes, I understand what  
13 you're talking about.

14 A. I mean, you will recall in the 2019 Senate District,  
15 I had an illustrative plan, and the state drew something  
16 very different. But it was a 50-percent-plus-one district  
17 and it was put into place.

18 Q. If I represented to you, Mr. Cooper, that this  
19 Colonial Hills precinct if you switch it and put it in  
20 Senate District 2 instead of Senate District 1, it makes  
21 the deviation in your redrawn Senate District 2 almost  
22 perfect. It's about ten people off of the ideal district  
23 size. You would have no reason to dispute that, would you?

24 A. I would not. But I would tell you the population in  
25 DeSoto County is rapidly growing, and that's one reason why

1 I like plus or minus five percent deviation. I realize  
2 that District 2 is underpopulated by four percent, but as I  
3 indicated earlier, the population and in particular the  
4 Black population in the county is growing fast. And so  
5 I've left some room for that district to expand without  
6 going beyond plus five percent on the upside by doing a  
7 minus four percent district.

8 Q. And if I represented to you if we made that switch,  
9 it would reduce the Black voting-age population in your  
10 redrawn Senate District 2 below 50 percent to  
11 49.76 percent, you'd have no reason to dispute that, would  
12 you?

13 A. I would not offhand, but I have no way of confirming  
14 it.

15 Q. Okay. Now, if we could -- Brent, let's call up  
16 Exhibit D3. Your Honor, Exhibit D3, appendix two has been  
17 admitted into evidence as part of Dr. Brunell's report.

18 So, Mr. Cooper, I believe you've seen these  
19 before --

20 A. Well, I've glanced at them. This is not what I  
21 normally look at when I'm drawing a plan, so I did not  
22 review them in great detail. It just doesn't mean much to  
23 me.

24 Q. I understand that. And I'll represent to you that  
25 this is a screenshot of a Maptitude drawing of the

1 districts that -- your redrawn districts in your area, the  
2 DeSoto County area, identifying the precincts. And the  
3 legend in the lower right-hand corner indicates the percent  
4 voting age -- Black voting-age population in each of those  
5 precincts. You see that, don't you?

6 A. Yes.

7 Q. And you see that the legend indicates that basically  
8 anything green or yellow is going to be 50 percent plus  
9 BVAP. Anything dark blue and purple is essentially  
10 30 percent below BVAP. Do you see that?

11 A. Yes, roughly.

12 Q. And so looking up at this map, you see Highway 51 as  
13 it's labeled on that map?

14 A. Yes.

15 Q. And that would be what we were just looking at in  
16 your illustrative plan, and I think that precinct you see,  
17 that precinct right there is Colonial Hills, isn't it?

18 A. I see the one that was Colonial Hills, right.

19 Q. Everything on the western side -- not everything,  
20 but a good portion of the precincts on the western side  
21 look like they're 50 percent BVAP plus, aren't they?

22 A. Yes. But I also see some that are 10 percent to  
23 20 percent or even less, blue ones there along the southern  
24 border between District 2 and District 16.

25 Q. Yeah. And that notch of Colonial Hills coming off

1 of 51, its's 30 percent or less BVAP, then, isn't it?

2 A. Yes. But you can see that I also included some  
3 other precincts that are 30 percent or less, and I did not  
4 include all of Northwest Community College, which that  
5 precinct is -- is over 50 percent.

6 Q. It looks like to me, Mr. Cooper, the precincts that  
7 you've included that are blue are split?

8 A. May be. I was following a main road there. I'm not  
9 sure. I mean, I don't know if I split them or not. I  
10 can't tell from this map.

11 Q. Okay. Let's go back to the -- Mr. Cooper's map,  
12 Brent, the PTX-001. All right. Mr. Cooper, let's go to --  
13 let's zoom out, Brent, let's get the general area. All  
14 right. Very good.

15 Okay. So, Mr. Cooper, I want to just look at the --  
16 this general area in and around Hernando. I think we may  
17 have covered most of this, but the two things I want -- you  
18 testified that you did try to respect incumbency when you  
19 were drawing your plan; correct?

20 A. Yes. But I have to stress that I just did not have  
21 a dead-certain listing of all 52 senators. I mean, I had  
22 addresses in some cases. I had PO boxes which indicated  
23 maybe a hometown. And that might work great if it's Tunica  
24 Resorts, but if you live in Southaven and you have a PO box  
25 in Southaven, exactly where you live in Southaven, I can't



1 tell. It would be very useful for the -- if there is ever  
2 a remedial plan in this case, for the plaintiffs to access  
3 to nothing more than a precinct file indicating where all  
4 52 senators live -- not where they live in the precinct,  
5 just which precinct they live in, which would make it much  
6 easier to avoid pairing senators.

7 Q. Well, Mr. Cooper, we did provide you with an address  
8 list for the addresses that we were able to provide;  
9 correct?

10 A. I don't know what. I got was from the attorneys,  
11 and I believe it did have some -- some information that you  
12 had provided. But it was incomplete, and so that's the  
13 problem. In some cases I may have been trying to protect  
14 an incumbent, but my understanding of where that incumbent  
15 lived based on a PO box may be a different interpretation  
16 than what I should have had. Whereas at the state level,  
17 whoever is drawing the maps for the legislature would have  
18 had a better idea.

19 Q. Thank you. I want to represent to you, Mr. Cooper,  
20 that the address list we provided has been introduced into  
21 evidence as joint Exhibit 9. And there are -- we did  
22 provide the address of the incumbent in Senate District 1  
23 at the time and Senate District 2.

24 And so, Brent, could you put the address in of the  
25 incumbent in Senate District 1.

1           Okay. I'll represent to you, Mr. Cooper, that you  
2   see that pinpoint on your map of the address of the  
3   incumbent in Senate District 1 as drawn by the legislature.

4           Zoom out, Brent, and we'll see that you've placed  
5   that incumbent in a new district with new territory,  
6   haven't you?

7   A.       I have. Hopefully, though, I have not paired that  
8   incumbent.

9   Q.       Okay.

10   A.       But there are lots of options, you know, if that  
11   individual needs to be back in District 1, there may be  
12   ways to accomplish that.

13   Q.       Okay. So without going through the exercise,  
14   Mr. Cooper, I'll represent to you that we put in the  
15   address for the incumbent of Senate District 2, Senator  
16   Parker, and he is now in your new redrawn Senate District  
17   1. You have no reason to dispute that, do you?

18   A.       I'll take your word for it.

19   Q.       So zoom out, Brent. All right. So then if I  
20   understand correctly, what you've done is you -- in terms  
21   of the changes you've made in your illustrative plan in the  
22   DeSoto County area versus the Senate Plan, you've reduced  
23   the number of whole Senate Districts within the county from  
24   three to two; correct?

25   A.       But also eliminated splits in Panola County and Tate

1 County.

2 Q. I understand. But I'm asking about DeSoto County.

3 A. Yes. But I'm saying --

4 JUDGE JORDAN: I'm sorry, sir, you need to answer  
5 the question he asks.

6 A. Yes, sir.

7 BY MR. CARDIN:

8 Q. So with regard to DeSoto County, so you have reduced  
9 the number of whole Senate Districts wholly within the  
10 county from three to two; correct?

11 A. Correct.

12 Q. And you now have two Senate Districts wholly within  
13 the county and two that are partially within the county;  
14 correct?

15 A. Correct.

16 Q. Okay. And so let's zoom out a little bit further,  
17 Brent. I want to look, Mr. Cooper -- yeah, there you go.  
18 Stop right there.

19 I want to look now at kind of the effect on the  
20 broader geographic area. We saw during your direct  
21 testimony some snippets of the individual districts you've  
22 drawn, but I want us to look at the broader area here. So  
23 your new Senate District 15, that's the territory that you  
24 pull out of the existing Senate District 1 and you combine  
25 that with the Tate County; correct?

1 A. Yes.

2 Q. And then as we move southward, your new Senate  
3 District 11, which is in the green there; correct?

4 A. Yes.

5 Q. It looks like that Senate District now really runs  
6 east and west rather than having parts of north and south  
7 districts in it; correct?

8 A. Yes. It also, as you can see, eliminates another  
9 county split so.

10 Q. And it also -- it also separates the cities of  
11 Oxford and Batesville from being in the same Senate  
12 District, doesn't it?

13 A. It would.

14 Q. Okay. And then you go on over to Oxford, and it  
15 looks like you've split the city of Oxford; correct?

16 A. I believe I did. That may have something to do with  
17 an incumbent.

18 Q. Okay. Because those city limit lines there would be  
19 in gray; correct?

20 A. Yes.

21 Q. Okay. So there's some pretty significant geographic  
22 changes that you've made in these Senate Districts even  
23 going southward, isn't there?

24 A. Well, there are the -- same holds for the plan you  
25 developed based on the 2019 plan. Changes had to be made.

1 You changed 51 of 52 Senate districts. You, the state  
2 legislature.

3 Q. I was going to say, Mr. Cooper, I would appreciate  
4 the compliment, but I can't take credit for it. Now up in  
5 this area, Mr. Cooper, so this Oxford Senate District was  
6 in Senate District 9 under the Senate map; correct?

7 A. Not sure. If you query it, I think we get a --

8 Q. I'll represent to you that it was, Mr. Cooper.

9 A. Okay.

10 Q. But now it's Senate District 43; correct?

11 A. Yes. Number changed.

12 Q. And so you did -- why did you do that?

13 A. You know, you could have different numbering system.  
14 I started, I guess, with the Senate's enacted plan and 43,  
15 I believe, maybe was the district that went down into the  
16 Quitman County area, and I just used that instead of 9.

17 Q. Okay. All right. Brent, let's go on down over to  
18 the Golden Triangle. There we go.

19 So Mr. Cooper, I'm moving now to your redrawn Senate  
20 District 17 that you testified about earlier. Now, again,  
21 what's depicted on this map are -- the red boundary lines  
22 are the overlay of the Senate map onto your redrawn  
23 boundaries; correct?

24 A. Yes.

25 Q. Now, did you pair any incumbents in this area?

1 A. I don't think so. I avoided pairing an incumbent, I  
2 believe, who lives in West Point. So I did split the city  
3 of West Point specifically to protect an incumbent.

4 Q. You split the city of West Point and you also  
5 crossed two planning district boundaries, didn't you?

6 A. I did. But from your perspective, that's okay;  
7 right?

8 Q. I'm not the one testifying, Mr. Cooper.

9 A. Okay.

10 Q. So you split Amory in your redraw of Senate District  
11 17, didn't you?

12 A. Yes. I think I was following precinct lines. So  
13 there you get the dilemma do I follow precinct lines or  
14 split a municipality.

15 Q. I represent to you, Mr. Cooper, we put the address  
16 in for an incumbent in Senate District 7, Senator Hob  
17 Bryan, and based on your redraw he is now in your redrawn  
18 Senate District 17. You have no reason to dispute that, do  
19 you?

20 A. I don't. I do know that there were incumbents in  
21 that area that also could have been paired and I tried  
22 avoid pairing them.

23 Q. And likewise, the incumbent in District 17, Senator  
24 Chuck Younger, we put his address in and he is now in your  
25 redrawn Senate District 7?

1 A. Oh, good. You know, there are many different ways  
2 to draw plans, but I'm glad that I didn't pair two  
3 incumbents.

4 Q. Well, you didn't pair two incumbents, but you  
5 certainly changed the geography particularly for the  
6 incumbent in Senate District 7 pretty significantly, didn't  
7 you?

8 A. We could get to the bottom of that in one of the  
9 exhibits. But I will take your word for it that the  
10 geography was changed.

11 Q. I'm just looking at the map here.

12 A. Yes. That's right. It appears to have been  
13 changed.

14 Q. Do you know how long the city of Amory has been  
15 whole in a Senate District over the years?

16 A. I do not know that.

17 Q. Okay. And in the adopted plan in the Senate Plan  
18 Senate District 7 had a deviation of just like minus  
19 .91 percent. You have no reason to dispute that, do you?

20 A. No.

21 Q. And in your redrawn plan, I think, your Senate  
22 District 7 now has a deviation of minus 4.62 percent; is  
23 that correct?

24 A. I'll take your word for it.

25 Q. Now, in your report, Mr. Cooper, you indicated that

1 Clay County was also linked to Chickasaw, Lee, and Monroe  
2 County via high school sports. And I think you cited the  
3 Mississippi High School Activity Association District 1  
4 includes Chickasaw, Clay, Lee, and Monroe Counties; is that  
5 correct?

6 A. I did reference that; right.

7 Q. So this is yet another criteria that you're adding  
8 to your analysis, and that is an assessment of district  
9 divisions of the Mississippi High School Activity  
10 Association?

11 A. No. That --

12 MR. SAVITZKY: Objection, Your Honor, to the  
13 question as mischaracterizing Mr. Cooper's testimony as  
14 high school sports being a criterion for districting.

15 JUDGE JORDAN: He can explain it. You want to ask  
16 the question again.

17 MR. CARDIN: Yes, I will.

18 BY MR. CARDIN:

19 Q. So Mr. Cooper, it appears as though you're adding  
20 yet another criteria to the criteria you used in developing  
21 your plan, and that is district divisions of the  
22 Mississippi High School Activity Association; is that  
23 correct?

24 A. No. That's just another way to look at that general  
25 region and consider whether there are communities of



1 interest between the Clay County area and further north  
2 going up towards Tupelo. And one community of interest  
3 would be high school sports. That's pretty important. So  
4 I mentioned that. But if you look at a footnote, I also  
5 mentioned an article in the Encyclopedia of Mississippi  
6 which describes Clay County as being part of a cluster of  
7 counties in northeast Mississippi including Chickasaw and  
8 Lee County and a couple of the others, as part of the  
9 Blackbelt Prairie, kind of a crescent shape that extends  
10 into Alabama. And it's not only a feature that is  
11 referenced as being a geologic connection, it also very  
12 specifically mentions there are cultural similarities that  
13 makes those counties more like the Alabama Blackbelt,  
14 maybe, than some of the other north Mississippi counties.

15 Q. But you didn't look how schools that are members of  
16 the Mid-South Association of Independent Schools are  
17 aligned in that area, did you?

18 A. No. You've told me that's a private sports league,  
19 so I did not look at that.

20 Q. Why not?

21 A. I did not know it was there.

22 Q. Mr. Cooper, I want to direct your attention --  
23 Brent, if you could pull up Mr. Cooper's deposition.

24 MR. CARDIN: Your Honor, may it please the Court,  
25 I'd ask that Mr. Cooper's deposition be marked for

1 identification purposes.

2 JUDGE JORDAN: Give me just one second. Would that  
3 be D78 for ID?

4 MR. CARDIN: Yes, Your Honor.

5 JUDGE JORDAN: All right. This will be marked for  
6 identification as D78.

7 (Defendants' Exhibit 78 marked for identification.)

8 BY MR. CARDIN:

9 Q. Mr. Cooper, I want to direct your attention to page  
10 108 of your deposition. So, Brent, if we can go there.

11 Okay. Mr. Cooper, you see at the bottom of that  
12 page I asked you the question, you looked at the divisions  
13 of the Mississippi High School but I'm asking you about the  
14 divisions of the Mid-South Independent School Association.  
15 Next page. Top of the next page, Brent. Top of the page.

16 I said, did you look at those? And you asked --  
17 your answer was -- line 2, what's your answer?

18 A. Line 2?

19 Q. Yes, sir.

20 A. Are those private schools?

21 Q. And my response was yes, line 4. And then I asked  
22 the question on line 5, and why not. And read your answer  
23 on lines 9 through 9.

24 MR. SAVITZKY: And, Your Honor, to the extent that  
25 this is impeachment, I don't think it's proper impeachment

1 to the extent that Mr. Cooper's statement is not  
2 inconsistent with anything he said on the stand today.

3 JUDGE JORDAN: It seems inconsistent. He testified  
4 that he didn't do it because he didn't know about those  
5 schools. This suggests he said something different in his  
6 deposition. Overruled.

7 BY MR. CARDIN:

8 Q. So, Mr. Cooper, your answer, lines 6 through 9?

9 A. Well, I did not consider the private schools. I  
10 didn't know what --

11 Q. If you will just read your answer, Mr. Cooper, that  
12 I've asked you to read, lines 6 through 9?

13 A. Okay. Well, frankly, it's unlikely that there would  
14 be high percentages of Black kids attending private  
15 schools. I hate to say that, but I think it's probably  
16 true. I'm from the south. I kind of know what private  
17 schools represent.

18 Q. Okay. Thank you, Mr. Cooper. All right. Brent  
19 let's pull up now Exhibit DX3. It's been introduced into  
20 evidence Your Honor as Exhibit DX3. It's the Maptitude  
21 screenshot for illustrative Senate District 17, page 42.

22 Okay. Mr. Cooper, here is another Maptitude  
23 screenshot of the northern area of your redrawn Senate  
24 District 17. Again, the legend is the same, green and  
25 yellow, 50 percent plus BVAP. Dark blue, purple,

1 30 percent less BVAP. So are you with me. You testify  
2 you've got Highway 45 going right up through the center,  
3 don't you?

4 A. Right.

5 Q. And the red boundary lines are the lines of your  
6 redrawn district. And so most of the precincts that I'm  
7 seeing within the boundaries are green and yellow. Is that  
8 what you're seeing?

9 A. That's correct.

10 Q. And outside are dark blue and purple; correct?

11 A. Right.

12 Q. All right. Let's go back to Mr. Cooper's  
13 illustrative map --

14 A. Can I have a second to explain that a little better?  
15 I did include areas that were generally within the two  
16 majority Black wards in the city council for the city of  
17 Tupelo. And you may note that I was involved in a Section  
18 2 lawsuit involving city council in Tupelo back around 2006  
19 or 2007, where I testified and presented an illustrative  
20 plan and where the Court found Section 2 violation  
21 requiring the creation of the second majority Black  
22 district in Tupelo.

23 Q. So you're very knowledgeable with the geography in  
24 that Tupelo area and the demographics in that geography,  
25 aren't you?

1 A. Up to a certain extent, yes. I did look at the city  
2 council plan in that area.

3 Q. Let's go back to Mr. Cooper's map, PTX-001. We're  
4 going to move now down to Senate District 9. I think your  
5 testimony earlier was that's down in the Hattiesburg area.  
6 And I think you've explained the changes. And do you know  
7 whether you split any precincts in drawing Senate District  
8 9?

9 A. I'm sure I did. I had to do some splitting to  
10 protect an incumbent.

11 Q. Let's shift real quickly to the Maptitude screenshot  
12 on this district, Exhibit DX3, appendix C, page 46. So  
13 here's the Maptitude screenshot of your redrawn Senate  
14 District 9, Mr. Cooper.

15 A. Yes. But just a reminder, this is not my Maptitude  
16 screenshot. I never look at maps like this.

17 Q. I understand. So it looks like to me a good portion  
18 of the precincts that are within the boundaries of your  
19 redrawn 45 are in the 50 percent plus BVAP category, aren't  
20 they?

21 A. Probably. There are different -- they are different  
22 colors though. I see 50 percent, but I also see some that  
23 are in the 30s, even some that are in the 10 percent to  
24 20 percent range out in the western part of that particular  
25 district, some of which may not even be in Hattiesburg.

1 Q. Okay. And I think down in the southeastern corner,  
2 that dark blue precinct is the Sheeplo precinct, isn't it?

3 A. I don't know the name. I have heard the name. I'm  
4 not sure where I heard it, though.

5 Q. Well, it's printed there.

6 A. Oh, yes.

7 Q. Yeah. That's Sheeplo. And it looks like you split  
8 it, didn't you?

9 A. Again that may have been an area where there was an  
10 incumbent issue. You know, these maps were drawn back in  
11 almost, you know six, probably eight months ago or more and  
12 there is a incumbent issue somewhere in Hattiesburg which  
13 required me to make some changes to the initial draft that  
14 I had. But I don't recall specifically where that  
15 incumbent is. I kind of think he is in that Sheeplo area.

16 Q. Thank you, Mr. Cooper.

17 All right. Brent, let's go back to Mr. Cooper's  
18 map, the PX001.

19 All right. Mr. Cooper, now we're back on your map,  
20 and, again, your map, the illustrative plan, the color  
21 shading of your redrawn districts, overlay of what the  
22 Senate did is in the bold red boundaries; correct?

23 A. Yes.

24 Q. All right. I want to direct your attention to your  
25 redrawn Senate District 35, which you testified about

1 earlier. Now, it looks like to me, Mr. Cooper, you've  
2 crossed two different -- or three different planning and  
3 development district boundaries to redraw this district; is  
4 that correct?

5 A. That would be correct. I have included Copiah and  
6 Simpson which are in the capital area, and I have included  
7 Lincoln County which is in the southwest, and then  
8 Jefferson Davis which is in the southern.

9 Q. And Lincoln County was whole in the Senate Plan,  
10 wasn't it?

11 A. Lincoln County was whole. I've swapped out and in  
12 this instance I've kept Lawrence County whole.

13 Q. Yeah. And so you crossed the boundary between --  
14 over in to Lincoln County right there at Wesson. And I see  
15 that territory that's going down in to Brookhaven. Now you  
16 extended that territory down in to Brookhaven because it  
17 has a significant Black population; correct?

18 A. There is some Black population at Brookhaven, right.

19 Q. And you actually split Brookhaven as well?

20 A. I was following precinct boundaries. And  
21 Brookhaven, the municipality is split. But I followed  
22 precinct lines, I think.

23 Q. Brent, let's go to, quickly, DX3. This is the  
24 Maptitude screenshot, Mr. Cooper. And we see particularly  
25 that area down where you just testified about in

1 Brookhaven, and we checked the legend on that and it's  
2 almost exclusively precincts that are BVAP 50 percent or  
3 more. Matter of fact, there's one that's 100 percent down  
4 at the bottom; correct?

5 A. 100 percent and above. I don't know what to think  
6 of that. How do you get above 100 percent Black? I don't  
7 know. I was not -- like I said, these maps are foreign to  
8 me. I'm not looking at the percentages. So to me it was  
9 just another precinct at the south end of town that was  
10 racially averse, clearly over 30 percent Black. And I knew  
11 that Brookhaven was -- I think Brookhaven may be about  
12 50 percent Black.

13 Q. All right. Mr. Cooper, let's turn our attention now  
14 to the House Districts. And did you have an understanding  
15 of the redistricting criteria used by the House in  
16 developing its plans?

17 A. I'm sorry. I missed that.

18 Q. Did you have an understanding of the redistricting  
19 criteria used by the House in developing its plan?

20 A. I thought that was basically the same as the section  
21 of the legislation that we looked at earlier this  
22 afternoon.

23 MR. CARDIN: Okay. All right. Along those lines at  
24 this point, Your Honor, I'd like to call up the House floor  
25 presentation, which is the video of the floor debate in the



1 House. It's Exhibit DX77. I'd like to request that that  
2 be played like we played the Senate one. It's  
3 approximately 13 minutes.

4 JUDGE JORDAN: Any objection?

5 MR. SAVITZKY: Your Honor, for the record, same  
6 objection. That it's cumulative, and I would also note to  
7 the extent it discusses topics other than the criteria used  
8 by the legislature, it might not be relevant. But I  
9 understand the Court has already ruled on an extremely  
10 similar exhibit, so just noting it.

11 JUDGE JORDAN: All right. Overruled. D77's  
12 admitted.

13 MR. CARDIN: Thank you, Your Honor. Brent.

14 (Defendants' Exhibit 77 entered.)

15 (Video playing in open court.)

16 MR. CARDIN: Okay. Okay. Thank you, Brent. May I  
17 proceed, Your Honor?

18 JUDGE JORDAN: Yes.

19 BY MR. CARDIN:

20 Q. So Mr. Cooper, in his presentation Chairman Beckett  
21 mentioned several different criteria, didn't he?

22 A. Yes.

23 Q. He mentioned the criteria adopted by the Standing  
24 Joint Committee, which I think you were aware of; correct?

25 A. Yes.

1 Q. He mentioned several districts were collapsed due to  
2 population changes. I think he mentioned one in the Monroe  
3 County area, didn't he?

4 A. I think he may have, yes.

5 Q. House District 20. And that's kind of the same  
6 general geographic area that you drew an additional  
7 majority minority district in, isn't it?

8 A. Yes.

9 Q. He also mentioned moving House District 33. And I  
10 heard him say they moved one to the DeSoto area and one to  
11 the coast? Is that what you heard?

12 A. I believe I did hear that one went to DeSoto and one  
13 went to the coast.

14 Q. He talked about incumbent pairings. He mentioned  
15 contiguity, didn't he?

16 A. Yes.

17 Q. He mentioned Section 2 compliance. He also  
18 mentioned compactness and split counties and precincts,  
19 didn't he?

20 A. Yes.

21 Q. And he also mentioned at the end, political  
22 performance, didn't he?

23 A. He did.

24 Q. Brent, I'd like to pull up now JTX48. Your honor,  
25 that's been admitted in to evidence as joint Exhibit 48.

1           And I'll represent to you that it is the JR1, the  
2 House Plan that was adopted as a consequence of that floor  
3 debate. You've reviewed this before, haven't you?

4 A.       This particular map?

5 Q.       Yes, sir.

6 A.       I haven't looked at it. I was mainly just working  
7 off the information that I had from the GIS files onscreen  
8 using my own software.

9 Q.       And Brent, zoom in just a little bit real quickly.  
10 So this map is really designed the same way the Senate map,  
11 isn't it, Mr. Cooper?

12 A.       Yes.

13 Q.       It's got the precincts on it, and the districts are  
14 drawn based on the precinct boundaries, just like it is in  
15 the Senate map; correct?

16 A.       Well, except the districts aren't necessarily drawn  
17 based on precinct boundaries, but you do show precinct  
18 lines.

19 Q.       Right. It looks like to me, though, that all the  
20 districts follow precinct lines in most places that I'm  
21 looking at on the map. Would you agree?

22 A.       Well, there are quite a few precinct splits. That's  
23 in my report.

24 Q.       There may be precinct splits, but my point is in  
25 this map, the districts are generally along precinct lines,

1     aren't they?

2     A.       You know, I haven't measured the map boundaries. I  
3     think you're probably correct. But I can't really say with  
4     certainty that that's the case.

5     Q.       Let's bring up Mr. Cooper's map, Brent, his  
6     illustrative House Plan which is Exhibit PTX001, page 60.

7             Okay. Mr. Cooper this is what's been admitted into  
8     evidence as PTX001, and this is the illustrative House Plan  
9     that you drew. Do you recognize that map?

10    A.       Yes.

11    Q.       Okay. So on this map, Mr. Cooper, then how do you  
12    depict the districts you redrew versus the districts that  
13    the House adopted?

14    A.       Well, the House Plan is shown in red lines  
15    throughout, just like the other online map.

16    Q.       Same as the Senate map; correct?

17    A.       Right.

18    Q.       Brent, let's go in, zoom in on House District 22,  
19    which is going to be in that Monroe, Chickasaw County area;  
20    right? Golden Triangle, kind of northwest there. There we  
21    go. Right there. The purple one. Okay. There we go.

22             Okay. Mr. Cooper, so I'm going to direct your  
23    attention to the -- what's the number, 022, there what does  
24    that represent on your map?

25    A.       Well, that is 22. House District 22.

1 Q. That's your redrawn 22?

2 A. In the illustrative plan, yes.

3 Q. So that redrawn plan is depicted in that kind of  
4 lavender purple color; is that correct?

5 A. Yes. And the House District boundaries in the 2022  
6 plan are red lines, and you can see those.

7 Q. Got you. Now you do recall Chairman Beckett  
8 mentioning moving a district in the Monroe County area to  
9 DeSoto County due to the population loss in that area and  
10 the gain in DeSoto County. Do you recall him mentioning  
11 that?

12 A. I do recall him moving a district from that area to  
13 DeSoto County. I'm not sure if the population loss has  
14 been terribly significant in that area but that's what the  
15 House did.

16 MR. CARDIN: All right. Brent, let's call up the  
17 Maptitude screenshot. Exhibit DX3. It's been introduced  
18 in evidence as Exhibit DX3.

19 BY MR. CARDIN:

20 Q. And Mr. Cooper, this is another screenshot,  
21 Maptitude map, of your redrawn House District 22.

22 As you can see, the -- your boundaries are the  
23 boundaries in red and same legend precincts 50 percent plus  
24 BVAP green and yellow. 30 percent less BVAP dark blue and  
25 purple.

1           And you see the precincts that are depicted in that  
2 map within your redrawn district, don't you?

3       A.       Yes.

4           MR. CARDIN: All right. Let's go back then to  
5 PTX001, Mr. Cooper's map, Brent. Let's go to House  
6 District 84 that he redraws which is going to be in and  
7 around Quitman, Mississippi which is going to be right down  
8 below Meridian. There we go. Okay. That's it. All  
9 right. Zoom out a little bit more. A little bit more.  
10 We've got to catch that territory jutting out up at the  
11 top.

12           Okay. All right.

13       BY MR. CARDIN:

14       Q.       Mr. Cooper, on this map, your redrawn 84 appears in  
15 blue; is that correct?

16       A.       Yes, in a light blue.

17       Q.       And I think what you did here was that you split the  
18 city of Quitman in your redraw; correct?

19       A.       Probably following a precinct line.

20           MR. CARDIN: All right. Let's pull up now, Brent,  
21 the DX3 and appendix 2, page 52. Here's that map we've  
22 been looking at same type of map as the other ones. Again,  
23 we see the red boundaries which are your redrawn boundaries  
24 and we note the green and yellow precincts that are within  
25 your boundaries as opposed to the dark blue and purple on

1 the outside of those boundaries.

2 A. Yes and again, I stress this is not the kind of map  
3 I'm looking at when I'm drawing districts. I do see the  
4 precinct lines but I do not see this barrage of colors.

5 MR. CARDIN: Okay. PTX60.

6 BY MR. CARDIN:

7 Q. Okay. Mr. Cooper, this is the last one and it is  
8 your redrawn House District 56.

9 MR. CARDIN: All right. Let's -- all right. Brent,  
10 this is a little more difficult to see.

11 BY MR. CARDIN:

12 Q. Mr. Cooper, but over on the western side of Hinds  
13 County, do you see the existing House District 56?

14 A. Yes, you can see how it extends from south of the  
15 interstate there in Clinton going all the way north in to  
16 Madison County up to Flora and beyond.

17 Q. Right. And Mr. Cooper, are you aware that that was  
18 the district, the former speaker of the House Philip Gunn  
19 was elected from?

20 A. You might have mentioned that to me at the  
21 deposition but I don't know. I knew where an incumbent  
22 lived. I think I put him or I put that -- I don't think I  
23 paired incumbents there but it is somewhat problematic in  
24 Hinds County due to a lot of people uses PO boxes.

25 MR. CARDIN: Okay. Brent, let's -- let's zoom in a

1 little bit closer there on -- go down below so we can get  
2 the City of Clinton in there. All right.

3 BY MR. CARDIN:

4 Q. So your redrawn 56 on the map there, Mr. Cooper, is  
5 that area that's -- it has the word "central" and right  
6 above, it is the number 056. There we go.

7 A. Right. Right. These numbers are reflecting the  
8 district numbers in the illustrative plan.

9 Q. Right.

10 A. You can query the map to get the actual number for  
11 the House District at any point on the map under the 2022  
12 plan.

13 Q. So now it looks like to me, Mr. Cooper, what you've  
14 done in your redrawn House District 56 is you have still  
15 split the city of Clinton, haven't you?

16 A. Yes.

17 Q. And it looks like you've split it with I20 as being  
18 the boundaries; is that correct?

19 A. Yes.

20 Q. Are you familiar with the city of Clinton and its  
21 geography, Mr. Cooper?

22 A. I think I've been around it but not very much.

23 Q. Do you know where the commercial corridors in the  
24 city of Clinton are?

25 A. No.



1 Q. Do you know -- would it be -- in your opinion, do  
2 you think the city of Clinton -- and strike that.

3 Looking at your map that you've redrawn, Mr. Cooper,  
4 it looks like you've taken the city of Clinton and in  
5 addition to splitting it, it's migrated in to west Jackson;  
6 is that correct?

7 A. That's correct.

8 Q. All right. In your opinion, does the city of  
9 Clinton have -- is it a community of interest with west  
10 Jackson?

11 A. They're right next door to one another.

12 Q. That's not what I asked you, Mr. Cooper. I asked  
13 you do you think that the city of Clinton and west Jackson  
14 constitute a community of interest?

15 A. Potentially, yes, because they're so close to one  
16 another. They could be -- it's an urban area, so there  
17 could be all sorts of common side relating to roads and  
18 highways. You name it so --

19 Q. I believe you also --

20 A. This District 56 is like 15 miles long.

21 Q. I believe you also testified earlier, though, in  
22 your direct that there were other factors that you  
23 considered in determining whether or not there's a  
24 community of interest, socioeconomic factors, geographic  
25 factors, a variety of factors other than being close to one

1 another?

2 A. Well, that's true. That's true. But in this case,  
3 it's only 15 miles long, so it's just really indisputable  
4 that it's a compact district.

5 Q. Do you know anything about the city of Flora,  
6 Mr. Cooper?

7 A. I do not. I know it's Madison County.

8 Q. Okay. So you wouldn't be in a position then to give  
9 me an opinion as to whether or not the cities of Flora and  
10 Clinton have more in common than the city of Clinton and  
11 west Jackson then?

12 A. Well, the city of Clinton, I think, is more suburban  
13 perhaps than some of the parts of west Jackson but it is  
14 also an area that has seen a significant increase in the  
15 Black population over the past couple of decades.

16 Q. But my question to you, Mr. Cooper, involved the  
17 city of Flora and whether or not you would have an opinion  
18 as to whether the city of Clinton and the city of Flora  
19 would have more in common with each other than the city of  
20 Clinton and west Jackson?

21 A. I can't answer that but Flora would clearly have --  
22 in my plan, you can see Flora is in a district that is  
23 largely in Madison County so one could say that there's a  
24 community of interest drawn around that area.

25 MR. CARDIN: Thank you, Mr. Cooper. Your Honor, I

1 have no further questions at this time.

2 JUDGE JORDAN: Mr. Wallace?

3 MR. WALLACE: Your Honor, you asked me to coordinate  
4 with Mr. Cardin. I suggested some questions to him and he  
5 thought I would do them better myself, so I have three  
6 questions.

7 JUDGE JORDAN: You may proceed.

8 **CROSS-EXAMINATION**

9 **BY MR. WALLACE:**

10 Q. Mr. Cooper, plaintiffs hired you to draw  
11 Black-majority districts because that's what the first  
12 point of *Gingles* requires; isn't that right?

13 A. They asked me to develop -- to analyze the  
14 demographics of the state and to determine whether or not  
15 it might be possible adhering to the traditional  
16 redistricting principles to draw additional majority Black  
17 House or majority Black Senate Districts.

18 Q. And you've put those into the record?

19 A. Right.

20 Q. And the Supreme Court also says that those districts  
21 have to be reasonably configured and you've spent the  
22 afternoon talking to Mr. Cardin about why you think the  
23 districts you've drawn are reasonably configured; is that  
24 right?

25 A. That's right. There's absolutely no question in my

1 mind that they are reasonably configured and follow  
2 traditional redistricting principles.

3 Q. And mindful of the danger of asking you a legal  
4 question.

5 A. Very dangerous. I'm not a lawyer so dangerous on my  
6 side, not your side.

7 Q. But you have listed at great length all sorts of  
8 things you have taken into consideration from high school,  
9 sports schedules to Planning and Development Districts and  
10 my question to you is: Does the Supreme Court in its  
11 *Gingles* jurisprudence require you to consider any of those  
12 things?

13 MR. SAVITZKY: And, Your Honor, I will just object  
14 to the question based on (inaudible) --

15 MR. WALLACE: That's why I objected to him, Your  
16 Honor, and you said it would go to the weight. I'd like to  
17 hear his answer.

18 JUDGE JORDAN: That's a different question. I mean,  
19 you can ask him if he -- I'm sorry? Turn your microphone  
20 on.

21 MR. SAVITZKY: I have nothing further, Your Honor.

22 JUDGE JORDAN: Okay. It's a different angle on the  
23 question. He can answer whether he relied on it, but  
24 you're asking him for a legal opinion about what *Gingles*  
25 says. That would be -- that objection's sustained.

1 MR. WALLACE: Okay. No, Your Honor, I'll leave it  
2 to you. You heard what he said he relied on, and we'll  
3 talk before the case is over about whether it had anything  
4 to do with *Gingles*. So I guess I only had two questions.

5 Thank you, Judge.

6 JUDGE JORDAN: All right. Thank you.

7 Redirect?

8 MR. SAVITZKY: Very briefly, Your Honor.

9 **REDIRECT EXAMINATION**

10 **BY MR. SAVITZKY:**

11 Q. Good afternoon again, Mr. Cooper.

12 A. Good afternoon.

13 Q. Just a few questions for you. First of all, do you  
14 still have a copy of what's been marked as defendants' 78,  
15 your deposition in front of you?

16 A. Yes. Well, no. No, I do not have a copy of that in  
17 front of me. It was on screen; right?

18 Q. Oh, it was on screen?

19 A. Yes.

20 MR. SAVITZKY: Your Honor, can I approach the  
21 witness and just share a hard copy with him? It's two  
22 questions on that issue.

23 JUDGE JORDAN: Sure.

24 MR. SAVITZKY: Thank you, Your Honor.

25 BY MR. SAVITZKY:

1 Q. I'm going to hand you your deposition. Just a quick  
2 question looking at the exchange that starts at, I believe,  
3 107 and continues on 108 about Mississippi school sports  
4 associations. Take a minute to look at it before we --  
5 look at Mr. Cardin's question and your answer to it.

6 So tell me when you're ready.

7 A. I guess I should go up a little further on this.

8 Q. Just tell me when you're ready.

9 A. Okay. I'll let you know.

10 Okay. I looked at it.

11 Q. Thanks, Mr. Cooper. I now have my own copy.

12 Now, prior to Mr. Cardin asking you about the  
13 Mid-South Independent Schools Association, had you ever  
14 heard of that sports association before?

15 A. No, I did not see a map indicating where the  
16 students come from in that particular division. I don't  
17 know if they're -- you know, if it's a public school, it's  
18 very clearly defined as to which counties and cities are in  
19 a public school district, right? With private schools  
20 oftentimes, they go to those schools for pay and maybe  
21 necessarily they don't have to be in a particular part of  
22 the county. Their parents would get them there one way or  
23 the other.

24 Q. And so when you then said later on -- looking at  
25 page 108 -- that it's unlikely there would be high

1 percentages of Black attending public schools, were you  
2 indicating you looked at that and decided to disregard this  
3 Mid-South Independent School Association or was it an  
4 off-the-cuff assessment?

5 A. It was an off-the-cuff assessment. I -- it's the  
6 first time I'd ever heard of Mid-South Independent School  
7 Association. If there's a map, I'd like to look at it and  
8 maybe I can make adjustments in a future map if need be.

9 MR. SAVITZKY: May I approach the witness?

10 JUDGE JORDAN: You may.

11 BY MR. SAVITZKY:

12 Q. Now, Mr. Cooper, if it's possible to bring up that  
13 URL. Looking at the screen here, we talked about Senate  
14 District 2 and I just want to zoom in here right where we  
15 were before and then right here.

16 And then Mr. Cooper, I see over here we're looking  
17 at Senate District 2 which you looked at with Mr. Cardin,  
18 and there's a gray boundary. What's that gray boundary  
19 that we see running east to west?

20 A. That would be a precinct line I believe.

21 Q. And --

22 A. No, it's not a pre -- go back to the layers. Do I  
23 have precincts in there?

24 Q. Let me ask you this question. Yeah, you can show  
25 the layers.

1 A. Go to the layers. No, there's no precincts in  
2 there. That's -- that's the Horn Lake municipal boundary.

3 Q. Okay. And so those lines there with that Colonial  
4 Hills on one side in one district and your SD-2 in the  
5 other is that following the municipal line for Horn Lake in  
6 that area?

7 A. Yes, it is.

8 MR. SAVITZKY: And we can take this down. And let's  
9 look at plaintiffs 001, page 386, and we can zoom in on the  
10 top of that image.

11 BY MR. SAVITZKY:

12 Q. Mr. Cooper, is this the 2022 Senate Plan with your  
13 illustrative district 17 overlaid?

14 A. Yes.

15 Q. And Mr. Cooper, you talked with Mr. Cardin about the  
16 portion of your district that is of Tupelo that's included  
17 in your illustrative Senate District?

18 A. Yes.

19 Q. And so is the portion of Tupelo that's contained in  
20 your illustrative Tupelo 17 also contained in a separate  
21 Senate District 7 which is in a different district from  
22 other portions of Tupelo in District 6?

23 A. Yes, there is a large part of District 7 that dips  
24 in to Tupelo and north.

25 Q. And does your District 17 and the state's District



1 7, do they follow the same lines in that Tupelo area?

2 A. Well, not completely but in large part, they do  
3 except for the southeast corner.

4 MR. CARDIN: And we can take that one down and  
5 actually, we can go to plaintiffs 001 at page 398. 398.

6 BY MR. SAVITZKY:

7 Q. And now looking at district 35 illustrative district  
8 35 and thinking about inclusion of Brookhaven in this  
9 district, was the Black population in Brookhaven the only  
10 reason to connect it with communities in Copiah County?

11 A. Well, no. As I've already mentioned, the Census  
12 Bureau has already indicated that the Brookhaven  
13 micropolitan area, which is basically just Lincoln County,  
14 is part of a -- what is known as a combined statistical  
15 area that would include all of the MSA of Jackson, and that  
16 decision or determination by the Census Bureau and the  
17 office of budget and planning at the federal level takes in  
18 to account commuting patterns between the smaller  
19 micropolitan area with the more urbanized -- further north  
20 any way -- Jackson MSA.

21 And if roughly 15 percent of the commuting pattern  
22 is journey in to work in to the Jackson MSA, which would  
23 include Copiah, then that area is considered to be combined  
24 statistical area. So there is a neutral definition that  
25 would put Brookhaven and Lincoln County in general with the

1 central planning district. Of course there are other  
2 regions that one could take into account as well like high  
3 school sports leagues, and there again, I think I mentioned  
4 that in my declaration. Lincoln County is associated with  
5 the same high school sports league as Copiah and Jefferson  
6 Davis.

7 Q. And I believe in your direct testimony you had  
8 mentioned a transportation connection there as well?

9 A. Well, yes. There's Highway 51 just a straight shot  
10 from the southern end of Copiah County in to Brookhaven.

11 MR. CARDIN: And we can take this image down. Just  
12 a couple of more questions.

13 BY MR. SAVITZKY:

14 Q. We looked at a couple of videos of the legislature  
15 during your conversation with Mr. Cardin and -- and you  
16 discussed specifically this idea of political performance.  
17 As you understand it, are the requirements adopted in  
18 the -- the official written guidelines in Mississippi  
19 for -- for drafting -- or for creating legislative  
20 districts, do those include political performance?

21 A. I don't think so. If they do, then I overlooked  
22 that. I did not consider political performance.

23 Q. But as far as you're aware, is political performance  
24 one of those officials guidelines?

25 A. Well, no, and I've never done political performance

1 for any *Gingles* 1 plan I draw. That's just not something I  
2 take into consideration.

3 Q. And now one other question, Mr. Cooper. Having  
4 watched those videos of legislators discussing the  
5 different criteria that they used to develop the 2022 plan,  
6 anything that you see change your conclusion about whether  
7 your plans added additional Black-majority districts that  
8 are reasonably configured and consistent with traditional  
9 districting principles?

10 A. Those speakers were, in some ways, well intentioned  
11 but there's actually nothing they said that would in any  
12 way change my opinions.

13 MR. SAVITZKY: No further questions, Your Honor.

14 JUDGE JORDAN: All right. Thank you. You can step  
15 down. All right. It's 5:00. It's a good time to stop.

16 Let me mention one thing. Mr. Savitzky, when I  
17 first ruled on whether that first video was cumulative,  
18 there had been a discussion about some floor debate and  
19 that's what I thought I was going to see. That's why I  
20 said the tone might matter but obviously, that's not what  
21 it was.

22 I will say this, though, it does give me a little  
23 pause that volume one of four from the plaintiffs are over  
24 a thousand pages long, and they are full volumes and I have  
25 a lot of volumes from defense as well.

1           And I don't want any of us to be in the situation in  
2     three weeks where we're asked to look at thousands of pages  
3     of documents that haven't been referenced in court. So it  
4     is easier for us, on something like that, if it is brought  
5     to our attention as opposed to later on, you give me a 182  
6     page, you know, proposed findings mentioning a 300-page  
7     document that's never been mentioned.

8           So it is going to be easier for us at the end of the  
9     day if these things are mentioned in court, so I just want  
10    to let both sides know that that is a concern of mine.  
11    It's going to be a heavy lift regardless.

12           MR. SAVITZKY: Understood, Your Honor, and  
13    appreciated.

14           JUDGE JORDAN: All right. All right. Thank you.  
15    We will reconvene tomorrow at 9:00. Thank you.

16    \*\*\*\*\*

**CERTIFICATE OF COURT REPORTER**

I, Candice S. Crane, Official Court Reporter for the United States District Court for the Southern District of Mississippi, do hereby certify that the above and foregoing pages contain a full, true, and correct transcript of the proceedings had in the forenamed case at the time and place indicated, which proceedings were stenographically recorded by me to the best of my skill and ability.

I further certify that the transcript fees and format comply with those prescribed by the Court and Judicial Conference of the United States.

THIS, the 26th day of February, 2024.

*/s/ Candice S. Crane, RPR, RCR, CCR*

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